

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

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5 In the Matter of:

6

7 PURDUE PHARMA L.P.

8

9 Debtor.

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11 United States Bankruptcy Court

12 Tele/Video Proceedings

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 August 13, 2021

17 10:07 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JUSTIN WALKER

1 HEARING re Continuance of Confirmation Hearing From August
2 12, 2021

3
4 HEARING re Notice of Agenda I Amended Agenda for August 12,
5 2021 Confirmation Hearing (ECF #3549)

6
7 HEARING re Amended Plan / Seventh Amended Joint Chapter 11
8 Plan of Reorganization of Purdue Pharma LP. and its
9 Affiliated Debtors filed by Eli J. Vonnegut on behalf of
10 Purdue Pharma L.P. (ECF #3545)

11
12 HEARING re Responses:
13 Objection to the Bankruptcy plan re: Claim 88041 filed by
14 Carrie L. McGaha. (ECF #2921)

15
16 HEARING re Letter to Judge Drain re: 82739 received 6-1-21
17 Filed by Michael W. Normile III. (ECF #2966)

18
19 HEARING re Letter to Judge Drain re: Claim 6177, Disclosure
20 Statement Filed by Les Burris.(ECF #3028)

21
22 HEARING re Letter to Judge Drain, re: 6750 Filed by Daniel
23 West, on behalf of Brian West.(ECF #3057)

24
25 HEARING re Letter Re: Legal Mail from Prime Clerk Marked

1 Contraband Filed by Thomas Hickey.(ECF #3099)

2

3 HEARING re Letter received 6/30/21 Filed by Theresa Willis.
4 (ECF #3100)

5

6 HEARING re Letter /Concerns regarding Disclosure
7 Statement/Plan (related document(s)2988) Filed by Teresa
8 VomSaal. (ECF #3110)

9

10 HEARING re Letter received 6/28/21 Filed by James E Crawley.
11 (ECF #3111)

12

13 HEARING re Statement Nictim Statement (Claim 619028) filed
14 by Tamara Graham. (ECF #3122)

15

16 HEARING re Letter re: Disclosure Statement (Settlement)
17 (related document(s)2988) Filed by Ruby Romas. (ECF #3123)

18

19 HEARING re Objection to Debtors' Plan of Reorganization
20 (related document(s)2988) filed by Kelvin X Singleton.
21 (ECF #3125)

22

23 HEARING re Letter re: Voting Disclosure Statement (related
24 document(s)2988) Filed by Shirley Belk.(ECF #3188)

25

1 HEARING re Objection to the Plan/Claimants Objection
2 (related document(s)2988) filed by Donald Ernest Allee. (ECF
3 #3199)
4 HEARING re Objection to Plan (related document(s)2988) filed
5 by Mary Butler-Fink, aka Parker's Mom. (ECF #3235)
6
7 HEARING re Objection of the United States Trustee to Sixth
8 Amended Joint Chapter 11 Plan of Purdue Pharma L.P. and its
9 Affiliated Debtors (related document(s)2982, 2983, 3185)
10 filed by Paul Kenan Schwartzberg on behalf of United
11 States Trustee. (ECF #3256)
12
13 HEARING re Objection to Sixth Amended Joint Plan, filed by
14 Peter D'Apice on behalf of Certain Native American Tribes
15 and Others.(ECF #3257)
16
17 HEARING re Objection to Confirmation of Amended Plan by
18 Independent Emergency Room Physician Michael Masiowski
19 (related document(s)3185) filed by Paul S Rothstein on
20 behalf of Paul S Rothstein. (ECF #3262)
21
22 HEARING re Objection I Certain Insurers' Limited Objection
23 to Plan Confirmation and Reservation of Rights (related
24 document(s)3185) filed by Philip D. Anker on behalf of XL
25 Insurance America, Inc., Liberty Mutual Insurance

1 Company, Liberty Mutual Fire Insurance Company, Liberty
2 Insurance Corporation, American Guarantee and
3 Liability Insurance Company, Aspen American Insurance
4 Company, Navigators Specialty Insurance Company,
5 North American Elite Insurance Company, Steadfast Insurance
6 Company. (ECF #3263)

7
8 HEARING re Objection to Confirmation of Amended Plan City of
9 Seattle's Objection to the Debtors' Plan of Reorganization
10 filed by Ben Harrington on behalf of City of Seattle.
11 (ECF #3264)

12
13 HEARING re Objection by The State of West Virginia, ex. rel
14 Patrick Morrissey, Attorney General to Confirmation of the
15 Debtors' Sixth Amended Joint Plan of Reorganization (related
16 document(s)2982, 2983, 3185) filed by Aaron R. Cahn on
17 behalf of The State of West Virginia, ex el. Patrick
18 Morrissey, Attorney General. (ECF #3265)

19
20 HEARING re Statement of the United States Regarding the
21 Shareholder Release filed by Lawrence Fogelman on behalf of
22 United States of America.(ECF #3268)

23
24 HEARING re Joint Objection to Confirmation of Plan of the
25 State of Connecticut, State of Maryland and District of

1 Columbia filed by Irve J. Goldman on behalf of State of
2 Connecticut. (ECF #3270)

3
4 HEARING re Objection to Plan and Plan Confirmation filed by
5 James Franklin Ozment I on behalf of Stacey Bridges.
6 (ECF #3271)

7
8 HEARING re Joinder and Objection of Gulf Underwriters
9 Insurance Company and St. Paul Fire and Marine Insurance
10 Company to the Sixth Amended Joint Chapter 11 Plan of
11 Reorganization of Purdue Pharma L.P. and its Affiliated
12 Debtors (related document(s)3185) filed by Bryce L. Friedman
13 on behalf of Gulf Underwriters Insurance Company, St. Paul
14 Fire and Marine Insurance Company. (ECF #3272)

15
16 HEARING re Objection to Confirmation of Plan (related
17 document(s)3185) filed by John A. Boyle on behalf of John H.
18 Stewart. (ECF #3273)

19
20 HEARING re Objection to Confirmation of Amended Plan filed
21 by Bernard Arda van Eskandari on behalf of People of the
22 State of California. (ECF #3274)

23
24 HEARING re Objection to Confirmation of Plan by Certain
25 Canadian Municipality Creditors and Canadian First Nation

1 Creditors to Confirmation of the Sixth Amended Joint Chapter
2 11 Plan of Reorganization of Purdue Pharma L.P.
3 and Its Affiliated Debtors (related document(s)3185) filed
4 by Allen J. Underwood on behalf of Guardian Law
5 Group LLP (ECF #3275)

6
7 HEARING re Objection to Confirmation of Plan of the State of
8 Washington, the State of Oregon, and the Objecting States
9 filed by Matthew J. Gold on behalf of State of Washington.
10 (ECF #3276)

11
12 HEARING re Objection to Plan Confirmation filed by James
13 Franklin Ozment I on behalf of Creighton Bloyd. (ECF #3277)

14
15 HEARING re Objection to Motion Objection to Sixth Amended
16 Joint Plan of Reorganization filed by Brian Edmunds on
17 behalf of State Of Maryland. (ECF #3278)

18
19 HEARING re Joinder filed by Jill Abrams on behalf of State
20 of Vermont. (ECF #3279)

21
22 HEARING re Joinder of the State of Delaware to Objection of
23 the State of Washington, the State of Oregon, and the
24 Objecting States to Confirmation of the Debtors' Plan of
25 Reorganization filed by Jillian Lazar on behalf of State of

1 Delaware. (ECF #3280)

2
3 HEARING re Objection to Motion filed by Morgan R Bentley on
4 behalf of Sarasota County Public Hospital District.
5 (ECF #3288)

6
7 HEARING re Objection to Consider Confirmation of the Fifth
8 Amended Chapter 11 Plan (related document(s)2988) filed by
9 Joyce Villnave. (ECF #3292)

10
11 HEARING re Objection to Fifth Amended Chapter 11 Plan of
12 Reorganization (Motion for Allowance) (related
13 document(s)2988) filed by Jerome J. Ferrier. (ECF #3293)

14
15 HEARING re Objection to the Plan & Motion to file late
16 ballots (related document(s)2988) filed by Earl Cobb.
17 (ECF #3298)

18
19 HEARING re Objection to the Plan & Motion to file late
20 ballots (related document(s)2988) filed by Tim Wright.
21 (ECF #3299)

22
23 HEARING re Objection to Confirmation of Plan Chubb Insurance
24 USAs Objection To The Sixth Amended Joint Chapter 11
25 Plan Of Reorganization Of Purdue Pharma L.P. And Its

1 Affiliated Debtors (related document(s)3185) filed by
2 Lawrence J. Kotler on behalf of Chubb Insurance USA.
3 (ECF #3301)

4 HEARING re Opposition/ Joinder of National Union to Certain
5 Insurers' Limited Objection to Plan Confirmation (related
6 document(s)3263) filed by Joseph G. Davis on behalf of
7 National Union Fire Insurance Company of Pittsburgh, PA.
8 (ECF #3304)

9
10 HEARING re Objection /Joint Objection of Certain
11 Distributors, Manufacturers, and Pharmacies (ECF #3306)

12
13 HEARING re Amended Objection to Confirmation of Amended Plan
14 by Independent ER Room Physician, Dr. Michael Masiowski
15 (ECF #3323)

16
17 HEARING re Statement Reservation of Rights of Her Majesty
18 the Queen in Right of the Province of British Columbia and
19 other Canadian Governments with respect to confirmation of
20 the Sixth Amended Joint Chapter 11 Plan of Reorganization of
21 Purdue Pharma L.P. and Its Affiliated Debtors filed by
22 Nickolas Karavolas on behalf of Her Majesty in Right of the
23 Province of British Columbia. (ECF #3335)

24
25 HEARING re Objection to Restructuring of Purdue Pharma L.P.,

1 ET ALL Case No. 19-23649(RDD) (related document(s)2988)
2 filed by Maria Ecke. (ECF #3357)

3
4 HEARING re Objection Anderson Brecon, Inc D/B/A PCI Pharma
5 Services (ECF #3359)

6
7 HEARING re Objection to the plan (related document(s)2988)
8 filed by D. Thomas Page. (ECF #3368)

9
10 HEARING re Objection to Confirmation of Plan filed by On
11 behalf of the Farash Family Barbara Farash.(ECF #3404)

12
13 HEARING re The Multi-State Governmental Entities Group's
14 Statement in Support of and Response to Certain Objections
15 to the Sixth Amended Joint Chapter 11 Plan of Reorganization
16 of Purdue Pharma L.P. and Its Affiliated Debtors
17 filed by Kevin C. Maclay on behalf of Multi-State
18 Governmental Entities Group. (ECF #3430)

19
20 HEARING re Statement of The Raymond Sackler Family in
21 Support of Confirmation of Debtors' Sixth Amended Plan of
22 Reorganization and in Reply to Plan Objections filed by
23 Gerard Uzzi on behalf of The Raymond Sackler Family.
24 (ECF#3438)

25

1 HEARING re Objection to Proposed Amendment of Contracts
2 Pursuant to Section 8.4 of Sixth Amended Joint Chapter 11
3 Plan of Purdue Pharma L.P. and Its Affiliated Debtors
4 (related document(s)3185) filed by Daniel Joseph Saval on
5 behalf of CuraScript, Inc., Express Scripts Holding Company,
6 Express Scripts Pharmacy, Inc., Express Scripts,
7 Inc. (ECF #3439)

8
9 HEARING re Response to Motion The Mortimer D. Sackler
10 Family's Response to Plan Objections and Statement in
11 Support of Confirmation of The Sixth Amended Joint Chapter
12 11 Plan of Reorganization of Purdue Pharma L.P. and its
13 Affiliated Debtors (related document(s)3435) filed by
14 Jasmine Ball on behalf of Beacon Company. (ECF #3442)

15
16 HEARING re Response to Objection of the United States
17 Trustee (related document(s)3256) filed by Michael Patrick
18 O'Neil on behalf of Ad Hoc Group of Hospitals. (ECF #3453)

19
20 HEARING re Response TO INSURER CONFIRMATION OBJECTIONS
21 (related document(s)3301, 3304, 3272, 3263) filed by Paul M.
22 Singer on behalf of Purdue Pharma L.P. (ECF #3455)

23
24 HEARING re Statement / Redacted Statement of the Official
25 Committee of Unsecured Creditors in Support of Confirmation

1 of the Sixth Amended Joint Chapter 11 Plan of Reorganization
2 of Purdue Phrama L.P. and Its Affiliated Debtors
3 filed by Ira S. Dizengoff on behalf of The Official
4 Committee of Unsecured Creditors of Purdue Pharma L.P., et
5 al. (ECF #3459)

6
7 HEARING re Reply: Reply to Objection and Improperly
8 Submitted Amended Supplemental Objection of Dr. Michael
9 Masiowski (related document(s)3323, 3262) filed by Michael
10 Patrick O'Neil on behalf of Ad Hoc Group of Hospitals.
11 (ECF #3413)

12
13 HEARING re Response / The Ad Hoc Group of Individual
14 Victims' Limited Reply in Support of Confirmation of the
15 Debtors' Joint Chapter 11 Plan of Reorganization (related
16 document(s)3271, 3256, 3185) filed by J. Christopher Shore
17 on behalf of Ad Hoc Group of Individual Victims of Purdue
18 Pharma L.P. (ECF #3427)

19
20 HEARING re Ad Hoc Committee Of NAS Children's Motion For
21 Leave To Exceed The Page Limit In Filing The Reply To
22 The United States Trustee's Objection To The Fee Settlements
23 Included In Sixth Amended Joint Chapter 11 Plan
24 Of Reorganization Of Purdue Pharma L.P. And Its Affiliated
25 Debtors filed by Scott S. Markowitz on behalf of Ad

1 Hoc Committee of NAS Babies. (ECF #3396)

2

3 HEARING re Debtors' Memorandum of Law in Support of
4 Confirmation of Debtors' Sixth Amended Joint Chapter 11 Plan
5 of Reorganization of Purdue Pharma L.P. and its Debtor
6 Affiliates and Omnibus Reply to Objections Thereto
7 (related document(s)3185) filed by Marshall Scott Huebner on
8 behalf of Purdue Pharma L.P. (ECF #3461)

9

10 HEARING re Ad Hoc Committee's Reply to Plan Objections
11 (related document(s)3268, 3270, 3256, 3272, 3276, 3265,
12 3301, 3304, 3185, 3263, 3306) filed by Kenneth H. Eckstein
13 on behalf of Ad Hoc Committee of Governmental and
14 Other Contingent Litigation Claimants. (ECF #3465)

15

16 HEARING re Related Documents:

17 Statement/ Notice of Filing of Special Education Initiative
18 Term Sheet (related document(s)2982) filed by Eli J.
19 Vonnegut on behalf of Purdue Pharma L.P. (ECF #3120)

20

21 HEARING re Statement / Notice of Filing of Eighth Plan
22 Supplement Pursuant to the Fifth Amended Joint Chapter 11
23 Plan of Reorganization of Purdue Pharma L.P. and its
24 Affiliated Debtors (related document(s)2982) filed by Eli J.
25 Vonnegut on behalf of Purdue Pharma L.P. (ECF #3121)

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HEARING re Letter request for video access to Confirmation
Hearing Filed by Katie Lynn B Townsend on behalf of Dow
Jones & Company, Inc., Boston Globe Media Partners, LLC, and
Reuters News & Media, Inc. (ECF #3129)

HEARING re Statement /Notice of Filing of Blackline of Sixth
Amended Plan (related document(s)3185) filed by Eli J.
Vonnegut on behalf of Purdue Pharma L.P. (ECF #3186)

HEARING re Statement/ Notice of Filing of Ninth Plan
Supplement Pursuant to the Sixth Amended Joint Chapter 11
Plan of Reorganization of Purdue Pharma L.P. and its
Affiliated Debtors (related document(s)3185) filed by Eli J.
Vonnegut on behalf of Purdue Pharma L.P. (ECF #3187)

HEARING re Statement/ Notice of Extension of Voting Deadline
(related document(s)3166, 2982) filed by Eli J. Vonnegut on
behalf of Purdue Pharma L.P. (ECF #3231)

HEARING re Statement/ Notice of Filing of Tenth Plan
Supplement Pursuant to the Sixth Amended Joint Chapter 11
Plan of Reorganization of Purdue Pharma L.P. and its
Affiliated Debtors (related document(s)3 1 85) filed by Eli
J. Vonnegut on behalf of Purdue Pharma L.P. (ECF#3232)

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HEARING re Statement/ Notice of Filing of Eleventh Plan
Supplement Pursuant to the Sixth Amended Joint Chapter 11
Plan of Reorganization of Purdue Pharma L.P. and its
Affiliated Debtors (related document(s)3185) filed by Eli J.
Vonnegut on behalf of Purdue Pharma L.P. (ECF #3246)

HEARING re Letter (Letter in Support of Request for Video
Access to Confirmation Hearing) (related document(s)3129)
Filed by Andrew M. Troop on behalf of Ad Hoc Group of Non-
Consenting States. (ECF #3248)

HEARING re Motion to Allow Filing of Amici Curiae Brief
filed by Ira Bumim on behalf of Kennedy Forum and other
national organizations. (ECF #3251)

HEARING re Statement/ Notice of Filing of Twelfth Plan
Supplement Pursuant to the Sixth Amended Joint Chapter 11
Plan of Reorganization of Purdue Pharma L.P. and its
Affiliated Debtors (related document(s)3185) filed by Eli J.
Vonnegut on behalf of Purdue Pharma L.P. (ECF #3283)

HEARING re Certain Distributors, Manufacturers, and
Pharmacies' Motion to Authorize Leave to Exceed Page Limit
in Filing the Joint Objection to the Sixth Amended Joint

1 Chapter 11 Plan of Purdue Pharma L.P. and Its Affiliated
2 Debtors filed by Christopher A. Lynch (ECF #3305)

3
4 HEARING re Order signed on 7/23/2021 Granting Leave to
5 Exceed Page Limit in Filing the Joint Objection to the Sixth
6 Amended Joint Chapter 11 Plan of Purdue Pharma L.P. and Its
7 Affiliated Debtors (Related Doc# 3305) (ECF #3309)

8
9 HEARING re Declaration/ Preliminary Declaration of Christina
10 Pullo of Prime Clerk LLC Regarding the Solicitation of Votes
11 and Tabulation of Ballots Cast on the Fifth Amended Joint
12 Chapter 11 Plan of Reorganization of Purdue Pharma
13 L.P. and its Affiliated Debtors (related document(s)2982)
14 filed by Eli J. Vonnegut on behalf of Purdue Pharma
15 L.P. (ECF #3327)

16
17 HEARING re Letter re Consents to Filing Amici Curiae Brief
18 Filed by Ira Bumim on behalf of Kennedy Forum and other
19 national organizations. (ECF #3355)

20
21 HEARING re Declaration / Final Declaration of Christina
22 Pullo of Prime Clerk LLC Regarding the Solicitation of Votes
23 and Tabulation of Ballots Cast on the Fifth Amended Joint
24 Chapter 11 Plan of Reorganization of Purdue Pharma L.P.
25 and its Affiliated Debtors (related document(s)3327, 2982)

1 filed by Eli J. Vonnegut on behalf of Purdue Pharma

2 L.P. (ECF #3372)

3
4 HEARING re Motion to Allow- Ad Hoc Committee Of NAS

5 Children's Motion For Leave To Exceed The Page Limit In

6 Filing The Reply To The United States Trustee's Objection To

7 The Fee Settlements Included In Sixth Amended Joint

8 Chapter 11 Plan Of Reorganization Of Purdue Pharma L.P. And

9 Its Affiliated Debtors filed by Scott S. Markowitz on behalf

10 of Ad Hoc Committee of NAS Babies. (ECF #3396)

11
12 HEARING re Declaration of Scott R. Bickford, Esq. In Support

13 of The Ad Hoc Committee of NAS Children's Reply To The

14 United States Trustee's Objection To The Fee Settlements

15 Included In The Sixth Amended Joint Chapter 11 Plan

16 of Reorganization of Purdue Pharma L.P. And Its Affiliated

17 Debtors (related document(s)3397, 3256, 3185) filed

18 by Scott S. Markowitz on behalf of Ad Hoc Committee of NAS

19 Babies. (ECF #3398)

20
21 HEARING re Declaration/ Third Supplemental Declaration of

22 Jeanne C. Finegan (related document(s)717, 719) filed by

23 James I. McClammy on behalf of Purdue Pharma L.P.

24 (ECF #3403)

1 HEARING re Affidavit Declaration of Rahul Gupta, MD, MPH,
2 MBA, FACP Filed by Michael Patrick O'Neil on behalf of Ad
3 Hoc Group of Hospitals. (ECF #3405)

4 HEARING re Affidavit Declaration of Rebecca M.S. Busch, MBA
5 Filed by Michael Patrick O'Neil on behalf of Ad Hoc Group
6 of Hospitals.(ECF #3407)

7

8 HEARING re Affidavit Declaration of Gayle A. Galan, M.D.
9 FACEP Filed by Michael Patrick O'Neil on behalf of Ad Hoc
10 Group of Hospitals. (ECF #3408)

11

12 HEARING re Affidavit Declaration of William Legier Filed by
13 Michael Patrick O'Neil on behalf of Ad Hoc Group of
14 Hospitals. (ECF#3409)

15

16 HEARING re Declaration of Richard A. Collura filed by
17 Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P.
18 (ECF #3410)

19

20 HEARING re Declaration of Jesse DelConte filed by Benjamin
21 S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #3411)

22

23 HEARING re Declaration of Deborah E. Greenspan filed by
24 Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P.
25 (ECF#3412)

1 HEARING re Declaration of Gautam Gowrisankaran filed by
2 Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P.
3 (ECF #3414)
4

5 HEARING re Declaration of Carl J. Trompetta filed by Gerard
6 Uzzi on behalf of The Raymond Sackler Family. (ECF #3415)
7

8 HEARING re Declaration of Garrett Lynam filed by Gerard Uzzi
9 on behalf of The Raymond Sackler Family. (ECF #3416)
10

11 HEARING re Declaration of Stephen A. Ives filed by Gerard
12 Uzzi on behalf of The Raymond Sackler Family. (ECF#3417)
13

14 HEARING re Declaration of David Sackler filed by Gerard Uzzi
15 on behalf of The Raymond Sackler Family. (ECF #3418)
16

17 HEARING re Declaration Supplemental Declaration of Jennifer
18 L. Blouin filed by Gerard Uzzi on behalf of The Raymond
19 Sackler Family. (ECF #3419)
20

21 HEARING re Declaration Maureen M. Chakraborty filed by
22 Gerard Uzzi on behalf of The Raymond Sackler Family.
23 (ECF #3420)
24

25 HEARING re Declaration of Lawrence A. Hamermesh filed by

1 Gerard Uzzi on behalf of The Raymond Sackler Family.

2 (ECF #3421)

3

4 HEARING re Declaration of Timothy J. Martin filed by Gerard

5 Uzzi on behalf of The Raymond Sackler Family. (ECF #3422)

6 Declaration of Mark F. Rule, CPA filed by Benjamin S.

7 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #3424)

8

9 HEARING re Motion to Authorize Raymond Sackler Family's

10 Motion for Leave to Exceed Page Limit in Statement in

11 Support of Confirmation of Debtors' Sixth Amended Plan of

12 Reorganization and in Reply to Plan Objections filed by

13 Gerard Uzzi on behalf of The Raymond Sackler Family.

14 (ECF #3425)

15

16 HEARING re Order signed on 8/5/2021 Granting Leave to Exceed

17 the Page Limit in Filing the Reply to the United States

18 Trustee's Objection to the Fee Settlements Included in Sixth

19 Amended Joint Chapter 11 Plan of Reorganization of

20 Purdue Pharma L.P. And its Affiliated Debtors,{Related Doc#

21 3396) (ECF #3426)

22

23 HEARING re Declaration of David W. DeRamus, Ph.D. filed by

24 Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P.

25 (ECF#3428)

1 HEARING re Order signed on 8/5/2021 RE: Establishing
2 Procedures for Remote Hearing on Confirmation of the Joint
3 Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and
4 It's Affiliated Debtors. (ECF #3429)

5

6 HEARING re Declaration of Joseph L. Turner filed by Benjamin
7 S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #3431)

8

9 HEARING re Declaration of Lianna E. Simmonds filed by
10 Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P.
11 (ECF #3432)

12

13 HEARING re Declaration of John S. Dubel filed by Benjamin S.
14 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #3433)

15

16 HEARING re Motion to Allow The Mortimer D. Sackler Family's
17 Motion for Leave to Exceed Page Limit in Filing their
18 Response to Plan Objections and Statement in Support of
19 Confirmation of the Sixth Amended Joint Chapter 11

20

21 HEARING re Plan of Reorganization of Purdue Pharma L.P. and
22 its Affiliated Debtors filed by Jasmine Ball on behalf of
23 Beacon Company. (ECF #3435)

24

25 HEARING re Motion to Authorize Leave to Exceed the Page

1 Limit in Filing the Reply to the U.S. Trustee's Objection
2 filed by Michael Patrick O'Neil on behalf of Ad Hoc Group of
3 Hospitals. (ECF #3437)

4
5 HEARING re Declaration of Jon Lowne filed by Benjamin S.
6 Kaminetzky on behalf of Purdue Pharma L.P. (ECF #3440)

7
8 HEARING re Declaration of Gregory P. Joseph filed by Gerard
9 Uzzi on behalf of The Raymond Sackler Family. (ECF #3441)

10
11 HEARING re Declaration/ Declaration of Gary A. Gotto in
12 Support of Ad Hoc Committee's Reply to Plan Objections and
13 in Support of Plan Confirmation filed by Kenneth H. Eckstein
14 on behalf of Ad Hoc Committee of Governmental and
15 Other Contingent Litigation Claimants. (ECF #3443)

16
17 HEARING re Declaration/ Declaration of John M. Guard in
18 Support of Ad Hoc Committee's Reply to Plan Objections and
19 in Support of Plan Confirmation filed by Kenneth H. Eckstein
20 on behalf of Ad Hoc Committee of Governmental and
21 Other Contingent Litigation Claimants. (ECF #3446)

22
23 Declaration/ Declaration of Jayne Conroy in Support of Ad
24 Hoc Committee's Reply to Plan Objections and in
25 Support of Plan Confirmation filed by Kenneth H. Eckstein on

1 behalf of Ad Hoc Committee of Governmental and
2 Other Contingent Litigation Claimants. (ECF #3447)
3 HEARING re Declaration of Timothy J. Martin (related
4 document(s)3442, 3185) filed by Jasmine Ball on behalf of
5 Beacon Company. (ECF #3448)
6
7 HEARING re Declaration of Peter H. Weinberger in Support of
8 Ad Hoc Committee's Reply to Plan Objections and in Support
9 of Plan Confirmation filed by Kenneth H. Eckstein on behalf
10 of Ad Hoc Committee of Governmental and Other Contingent
11 Litigation Claimants. (ECF #3449)
12
13 HEARING re Declaration of Jessica B. Horewitz, PhD. in
14 Support of the Ad Hoc Committee's Reply to Plan
15 Objections and in Support of Plan Confirmation filed by
16 Kenneth H. Eckstein on behalf of Ad Hoc Committee of
17 Governmental and Other Contingent Litigation Claimants.
18 (ECF #3450)
19
20 HEARING re Declaration of Jonathan Greville White (related
21 document(s)3442, 3185) filed by Jasmine Ball on
22 behalf of Beacon Company. (ECF #3451)
23
24 HEARING re Declaration of Alexa M. Saunders (related
25 document(s)3442, 3185) filed by Jasmine Ball on behalf of

1 Beacon Company. (ECF #3452)

2
3 HEARING re Declaration of Jesse DelConte filed by Benjamin
4 S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #3456)

5
6 HEARING re Motion to Allow/ Motion of the Official Committee
7 of Unsecured Creditors for Leave to Exceed Page Limit in
8 Statement in Support of Confirmation of the Sixth Amended
9 Joint Chapter 11 Plan of Reorganization of Purdue Pharma
10 L.P. and Its Affiliated Debtors filed by Ira S. Dizengoff on
11 behalf of The Official Committee of Unsecured Creditors of
12 Purdue Pharma L.P., et al. (ECF #3457)

13
14 HEARING re Declaration / Redacted Declaration of Michael
15 Atkinson in Support of the Statement of the Official
16 Committee of Unsecured Creditors in Support of Confirmation
17 of the Sixth Amended Joint Chapter 11 Plan of Reorganization
18 of Purdue Pharma L.P. and Its Affiliated Debtors filed by
19 Ira S. Dizengoff on behalf of The Official Committee of
20 Unsecured Creditors of Purdue Pharma L.P., et al.(ECF #3460)

21
22 HEARING re Motion to Allow/ Debtors' Motion for Leave to
23 Exceed the Page Limit in Filing Memorandum of Law in Support
24 of Confirmation of Debtors' Sixth Amended Joint Chapter 11
25 Plan of Reorganization of Purdue Pharma L.P. and

1 its Debtor Affiliates and Omnibus Reply to Objections
2 Thereto filed by Marc Joseph Tobak on behalf of Purdue
3 Pharma L.P. (ECF #3462)

4
5 HEARING re Motion to Approve Motion to Exclude the Expert
6 Testimony of William P. Hrycay, CPA filed by Jasmine Ball on
7 behalf of Beacon Company (ECF #3490)

8
9 HEARING re Notice of Motion to Exclude the Expert Testimony
10 of William P. Hrycay, CPA (related document(s)3490) filed
11 by Jasmine Ball on behalf of Beacon Company. (ECF #3491)

12
13 HEARING re Order signed on 8/9/2021 Granting Leave to Exceed
14 the Page Limit in the Mortimer D. Sackler Family's
15 Response to Plan Objections and Statement in Support of
16 Confirmation of the Sixth Amended Joint Chapter 11
17 Plan of Reorganization of Purdue Pharma L.P. and its
18 Affiliated Debtors (related document(s)3480) (ECF #3515)

19
20 HEARING re Amended Order signed on 8/9/2021 Establishing
21 Procedures for Remote Hearing on Confirmation of the Sixth
22 Amended Joint Chapter Plan of Reorganization of Purdue
23 Pharma L.P. and Its Affiliated Debtors (ECF #3521)

24
25 HEARING re Notice of Withdrawal of Limited Objection to Plan

1 (related document(s)3257) filed by Peter D'Apice on behalf
2 of Certain Native American Tribes and Others. (ECF #3522)
3 HEARING re Statement/ Notice of Filing of Thirteenth Plan
4 Supplement Pursuant to the Sixth Amended Joint Chapter 11
5 Plan of Reorganization of Purdue Pharma L.P. and its
6 Affiliated Debtors (related document(s)3185) filed by Eli J.
7 Vonnegut on behalf of Purdue Pharma L.P. (ECF #3528)
8
9 HEARING re Motion to Strike Amended Motion to Exclude the
10 Expert Testimony of William P. Hrycay, CPA (related
11 document(s)3490, 3491) filed by Jasmine Ball on behalf of
12 Beacon Company (ECF #3530)
13
14 HEARING Re Motion to Strike Declaration of Lawrence
15 Hamermesh and Exclude Expert Testimony filed by Sara
16 Tonnesen on behalf of State Of Maryland. (ECF #3542)
17
18 HEARING re Stipulation in Connection with the Debtors'
19 Chapter 11 Plan of Reorganization (related document(s)2982,
20 3185) Filed by Marshall Scott Huebner on behalf of Purdue
21 Pharma L.P. (ECF #3543)
22
23 HEARING re Statement / Notice of Filing of Blackline of
24 Seventh Amended Plan (related document(s)3545) filed by Eli
25 J. Vonnegut on behalf of Purdue Pharma L.P. (ECF#3546)

1 HEARING re Statement I Notice of Filing of Fourteenth Plan
2 Supplement Pursuant to the Seventh Amended Joint Chapter 11
3 Plan of Reorganization of Purdue Pharma L.P. and its
4 Affiliated Debtors (related document(s)3545) filed by Eli J.
5 Vonnegut on behalf of Purdue Pharma L.P. (ECF #3547)

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1 A P P E A R A N C E S :

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8 P R O C E E D I N G S

9 THE COURT: Okay, good morning. This is Judge
10 Drain. We are here in In re Purdue Pharma LP et al. This
11 is the second day of the hearing on the Debtor's request for
12 confirmation of their amended Chapter 11 plan. And I have
13 the order of witnesses that was submitted for today and I'm
14 happy to go down that order unless there are any initial
15 housekeeping or other statements.

16 MR. HUEBNER: Good morning, Your Honor. For the
17 record, Marshall Huebner of Davis Polk & Wardwell on behalf
18 of the Debtors. Can I be heard and seen clearly?

19 THE COURT: Yes.

20 MR. HUEBNER: Terrific. Your Honor, three quick
21 matters for me before I turn the virtual podium over to Mr.
22 Kaminetzky. Number one, with respect to the glitches that
23 happened yesterday (indiscernible) is aware the governmental
24 Zoom system proved complicated for many people who could not
25 get in. Many people stayed up very late into the night,

1 including from the Clerk's office and of course chambers and
2 obviously the private side we have now put in I hope double
3 and triple redundancies to ensure that we're ready to go.
4 Our witnesses already have empty rooms dialed in and are
5 ready to step in as they are allowed to. So hopefully those
6 complexities will not (indiscernible). It was no one's
7 fault. You know, it's governmental Zoom's fault as it were.
8 But it does appear that it's now addressed, and we have
9 backup plans ready to go to repeat any of the complexities
10 of yesterday.

11 THE COURT: Okay, great.

12 MR. HUEBNER: Number two, Your Honor, I did want
13 to take the opportunity -- I did not want to cut in
14 yesterday, but you asked Mr. Kaminetzky a question yesterday
15 at the very end, which I actually had about six calls last
16 night to confirm. I actually knew the answer but I didn't
17 want to jump in until I confirmed it. So I do want to give
18 the Court the answer for what it is worth. Obviously I'm
19 just a lawyer, but there is each TDP was actually done by
20 its own group and was done by experts in the field of that
21 category of TDP. So, for example --

22 THE COURT: All right. And since I have Ms.
23 Greenspan, I'll ask her that question, which is fine.

24 MR. HUEBNER: Okay, yeah. Again, I'm not sure she
25 was involved in drafting of each TDPs. I think she looked

1 at them afterwards. But let's see how the day goes. But we
2 will be ready to discuss that. And in confirmed with
3 multiple parties last night how their TDPs were done. And
4 it was definitely absolutely not done by anybody's
5 bankruptcy lawyers.

6 THE COURT: Okay.

7 MR. HUEBNER: The last item, Your Honor, is Mr.
8 Troop asked me to announce on the record this morning, which
9 we are certainly happy to do, a few days ago as part of an
10 agreement on several other matters, including removing
11 things in the plan that were proving just unworkable, that
12 were really, you know, arguably for the benefit only of the
13 states that they were willing to live without as well as the
14 Stewart and Timney stipulation which was negotiated by
15 various parties and then presented to the Debtors. We
16 didn't negotiate it, the AHC and the UCC and the NCSG
17 negotiated it and then brought it to us, and we were fine
18 with it.

19 The Debtors were asked to pay all of the fees of
20 the NCSG through the date of the end of the third round of
21 mediation before Judge Chapman, where that group obviously
22 split with now approximately two-thirds of that group
23 constituting the 38 states out of 48 who support the plan.
24 Candidly, not an entirely simple proposition for us since
25 obviously most of the plan objectors are actually the

1 remaining stub of that group that continues to object. And
2 it's not typical to say the least to pay the fees for most
3 of the case for people who are very much not on board.

4 Nonetheless, we decided it was just the right
5 thing to do. And so we will be filing papers in due course
6 that will look a lot like the motions that the Court has
7 seen before with the MSGE and the AHC. So we will now
8 essentially be paying the fees in the face of the NCSG
9 through the end of round three of mediation for all of the
10 three organized governmental --

11 WOMAN: How do we -- the speaker.

12 MR. HUEBNER: Yeah, sorry. Could the witness in
13 Washington please stay on mute until we're ready? Thank you
14 so much.

15 So I just wanted to -- Mr. Troop just asked that
16 we let the Court know that. Again, there will be a full
17 formal motion on notice. Anyone can say their piece. But
18 the AHC and the UCC and the MSGE all support the request,
19 and the Debtors ultimately came around to it. Obviously
20 we're not paying for the fees of the objectors to object to
21 confirmation. This is through round three of mediation.
22 And, again, it just seems like the right thing to do, and so
23 we did it. So, Your Honor, that --

24 THE COURT: Okay. Just to be clear, those fees
25 aren't being paid until there is a determination on that

1 motion.

2 MR. HUEBNER: Absolutely, Your Honor. That
3 probably wasn't clear. We are filing a full motion on
4 notice to be a separate hearing with a proposed order
5 exactly as we do for everything in this case. But Mr. Troop
6 asked that it be announced this morning just to let the
7 world I guess know that the Debtors have agreed to do this.
8 And we didn't have a reason to not exceed to his request.

9 THE COURT: Okay, fine. Thank you.

10 MR. HUEBNER: So with that, Your Honor, I will go
11 off-camera and on mute and turn the podium over to
12 Kaminetzky and our witnesses for today.

13 THE COURT: Okay, very well.

14 MR. ROTHSTEIN: Your Honor, this is Paul Rothstein
15 for Dr. Masiowski. I just have one really minor
16 housekeeping matter. I don't know whether you want me to
17 bring it up now or at the end of the day in regards to
18 Christina Pullo of Prime Clerk.

19 THE COURT: Why don't you go ahead?

20 MR. ROTHSTEIN: Okay. So I just would like to be
21 able to know what the Court said they were going to defer
22 ruling as to whether the information we requested yesterday
23 regarding the people in the hospital trust that voted no as
24 to whether we can get the granular data on that --

25 THE COURT: No, that should come up when I hear

1 your argument on this issue. I'm not even sure how it ties
2 into any issue before me. So it is premature to raise it at
3 this point.

4 MR. ROTHSTEIN: All right, thank you.

5 THE COURT: Okay.

6 MR. KAMINETZKY: Good morning, Your Honor.

7 Benjamin Kaminetzky of Davis Polk for the Debtors.

8 Before we turn to the first witness who is teed
9 up, Ms. Deborah Greenspan, I want to just provide an update
10 with respect to two other witnesses, Jesse DelConte and
11 Lianna Simmonds.

12 As Your Honor is aware, the insurer group filed a
13 motion in limine at Docket 3514 with respect to certain
14 testimony, very limited, offered by Jesse DelConte and Ms.
15 Lianna Simmonds. The Debtors, the Ad Hoc Committee, and the
16 Insurers Group, including Travelers, are engaged in good
17 faith negotiations with respect to that motion in limine.
18 So according, the insurer group agreed not to be crossing
19 Mr. DelConte or Ms. Simmonds today on the issues covered by
20 that motion in limine.

21 The Debtors will call Mr. DelConte and Ms.
22 Simmonds back to the extent that motion in limine is not
23 worked out. Obviously we have -- you know, we believe it
24 could and should and will be worked out.

25 So Mr. DelConte's declaration will be offered into

1 evidence and hopefully received into evidence today, will be
2 subject to the issues raised in the insurer's motion in
3 limine, at least until the parties' efforts conclude.

4 THE COURT: Okay.

5 MR. KAMINETZKY: The debtors won't be calling,
6 therefore, Ms. Simmonds today as Your Honor may have seen.
7 The only issue relates to the insurance, so she likely --
8 you know, we'll just wait until the motion in limine is
9 worked out and --

10 THE COURT: And she was not a witness other than
11 to introduce documents. She didn't offer up any testimony.

12 MR. KAMINETZKY: Exactly.

13 THE COURT: So that's fine.

14 MR. KAMINETZKY: Okay, that's fine. Also, we have
15 confirmed again with the DMPs with whom we are still working
16 away at a resolution. So we have the same agreement.
17 They'll forego cross-examination on Mr. DelConte and Mr.
18 Turner. And if things fall apart, we'll agree to bring them
19 back. I think that's the most efficient way to proceed,
20 rather than, you know, make them do their spiel when
21 hopefully it won't be necessary.

22 THE COURT: Okay.

23 MR. KAMINETZKY: So we've confirmed with
24 (indiscernible) and she is on board with that.

25 Finally, Your Honor, as you mentioned, we had to

1 shift around the order of witnesses. Not the Debtor's
2 witnesses. We'll proceed in the order that we provided to
3 the Court. And then, you know, we'll proceed with the
4 witnesses per my email to the Court and to the parties
5 yesterday evening. Do you want me to read that order so
6 that folks know what's to come, or we could just proceed?

7 THE COURT: Well, was this order -- the order of
8 witnesses filed?

9 MR. KAMINETZKY: It's the order of witnesses that
10 we circulated last night.

11 THE COURT: Was it filed on the docket?

12 MR. KAMINETZKY: It was not filed -- its original
13 order was not filed on the docket.

14 THE COURT: All right. So I'll just read it. As
15 I have it, it's Ms. Greenspan and Mr. DelConte, who are the
16 Debtor's witnesses. Mr. Turner, who is also a Debtor
17 witness. You are not going to actually go ahead with Ms.
18 Simmonds, I guess.

19 MR. KAMINETZKY: Right.

20 THE COURT: And then John -- I hope I'm
21 pronouncing this right -- Guard, Jessica Horewitz, Gary
22 Gotto, and Peter Weinberger, each of whom are being offered
23 by the Ad Hoc Committee. And then witnesses offered up by
24 one or other of the Sackler family members, Timothy Martin,
25 Carl Trompetta, Lawrence Hamermesh, with respect to which

1 there is a motion in limine by the State of Maryland,
2 Maureen Chakraborty, Garrett Lynam, which is -- and then
3 Stephen Ives, if we get to those two.

4 MR. HIGGINS: Your Honor, this is Ben Higgins for
5 the U.S. Trustee. I had a question on the DelConte matter
6 if that's okay.

7 THE COURT: Okay.

8 MR. HIGGINS: As Your Honor is probably aware, the
9 Debtors rely on Mr. DelConte's testimony related to the
10 insurance in support of their arguments on subject matter
11 jurisdiction. And we had some very limited cross on the
12 insurance piece. I'm just wondering if they're offering the
13 insurance part today and if it's appropriate for us to cross
14 on those issues today or if we should wait until the motion
15 in limine is resolved, Your Honor.

16 THE COURT: Okay.

17 MR. KAMINETZKY: I'm fine either way. But I think
18 the U.S. Trustee can certainly ask those questions today,
19 because that's not going to be -- his issue won't be
20 resolved by the motion in limine.

21 THE COURT: All right. And frankly, I don't think
22 the motion in limine really addresses those issues if I
23 understand them correctly, Mr. Higgins. So you should plan
24 on asking those today.

25 MR. HIGGINS: Thank you, Your Honor.

1 THE COURT: Okay. All right.

2 MR. KAMINETZKY: And just one final thing, Your
3 Honor, is that Mr. (indiscernible) from your office just
4 asked me to announce that one of the issues yesterday is
5 that folks shouldn't click on the Zoom link, but instead
6 joined with browser and manually enter the password, and
7 that should overcome some of the problems that we had
8 yesterday. So I thought I would do that (indiscernible).

9 THE COURT: Okay. And could I just say if someone
10 does have a problem linking in, they might shortcut being
11 able to link in by reaching out to Mr. (indiscernible) in
12 the clerk's office and he can walk them through it. But
13 hopefully that's been done with people, as you said, last
14 night and this morning. Okay.

15 So are we ready to call Ms. Greenspan then?

16 MR. KAMINETZKY: Yes, we are. Thank you, Your
17 Honor.

18 THE COURT: Okay.

19 MR. KAMINETZKY: (indiscernible) Davis Polk &
20 Wardwell LP for the Debtors. And the Debtor's next witness
21 is Ms. Greenspan.

22 THE COURT: Okay. So, Ms. Greenspan, would you
23 raise your right hand, please?

24 Do you swear or affirm to tell the truth, the
25 whole truth, and nothing but the truth, so help you God?

1 MS. GREENSPAN: I do.

2 THE COURT: Okay. And it's Deborah, D-e-b-o-r-a-
3 h, and then next word G-r-e-e-n-s-p-a-n?

4 MS. GREENSPAN: That's correct.

5 THE COURT: Okay. Ms. Greenspan, you submitted a
6 declaration dated August 5, 2021, which attaches an expert
7 report as your direct testimony in this proceeding under my
8 order establishing procedures for this hearing. The expert
9 report is dated June 15, 2021. Sitting here today on August
10 13, is there anything in either your declaration or your
11 expert report that you would wish to change?

12 MS. GREENSPAN: No, Your Honor, I do not wish to
13 change anything.

14 THE COURT: Okay, very well. Thank you.

15 So does anyone object to the admission of Ms.
16 Greenspan's declaration or expert report?

17 All right. I will admit the declaration and
18 expert report as Ms. Greenspan's direct testimony. And
19 subsumed in that ruling is my determination that she is
20 qualified as an expert on the resolution and implementation
21 of mass claims or mass claims against entities or people and
22 the opinions in her expert report.

23 Does anyone wish to cross-examine Ms. Greenspan?

24 Okay, no one.

25 Let me ask you, Ms. Greenspan, although I did ask

1 counsel this yesterday, did you have any role in negotiating
2 or drafting the actual trust distribution procedures that
3 are in the plan or plan supplement here that you opine on?

4 MS. GREENSPAN: No. I did not have any role in
5 drafting or negotiating those documents.

6 THE COURT: Okay. And I just want to -- you don't
7 opine as to the propriety of the allocation, do you, between
8 the amount dedicated to the personal injury trusts and the
9 amount dedicated to other claimant recoveries and other
10 trusts under the plan? That's not a subject of your
11 testimony, right?

12 MS. GREENSPAN: No.

13 THE COURT: Okay.

14 MS. GREENSPAN: I do not opine on those matters.

15 THE COURT: Right. All right, very well. So
16 hearing no one who wishes to cross-examine you on your
17 declaration or your report, you can sign off.

18 MS. GREENSPAN: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. KAMINETZKY: Mr. DelConte offered two
21 different declarations, one fact and one expert. I hope
22 Your Honor has that --

23 THE COURT: I have them both. So you're calling
24 Mr. DelConte at this point.

25 MR. HUEBNER: Mr. Kaminetzky, while we're waiting,

1 when you lean back from the mic, your voice really fades out
2 and it's hard for everyone to hear. So if you don't
3 (indiscernible) really short. So you have to lean in a
4 little bit.

5 MR. KAMINETZKY: Lean into that.

6 THE COURT: Okay. Would you raise your right
7 hand, please? Do you swear or affirm to tell the truth, the
8 whole truth, and nothing but the truth, so help you God?

9 MR. DELCONTE: I do.

10 THE COURT: Okay. And it's J-e-s-s-e, new word,
11 D-e-l-C-o-n-t-e?

12 MR. DELCONTE: That's correct.

13 THE COURT: Okay. Mr. DelConte, you submitted two
14 declarations in connection with this hearing under my order
15 establishing procedures for the hearing. They are intended
16 to be your direct testimony. The first one is dated August
17 5, 2021 and it is a facts declaration. Sitting here today
18 and knowing that it would be your direct testimony, is there
19 anything in it that you would wish to change?

20 MR. DELCONTE: No, there is not.

21 THE COURT: Okay. And then in addition to that,
22 you submitted an August 5, 2021 declaration attaching an
23 amended expert report dated August 3, 2021, again intended
24 to be your direct testimony in this case as an expert on
25 liquidation analyses and related issues. Under my order

1 establishing procedures for this hearing, this is intended
2 to be your direct testimony in the hearing. Sitting here
3 today on August 13th, is there anything that you wish to
4 change in either the declaration or the expert report that's
5 attached to and incorporated in it?

6 MR. DELCONTE: No, there is not.

7 THE COURT: Okay. All right. Does anyone object
8 to the admission of either of these declarations? And I'm
9 saying that with the caveat that we previously recognized
10 that two parties in the case, their rights are reserved if
11 the Debtors and they do not work out a resolution of
12 potential objections to the declarations to call and cross
13 Mr. DelConte later and/or object as per the motion in limine
14 that was filed. But does anyone else object to the
15 admission of either of these declarations?

16 All right. I will admit each of them. Subsumed
17 in that is the qualification of Mr. DelConte as an expert
18 with respect to the matters covered by his expert
19 declaration, which is primarily -- or is couched in terms of
20 his liquidation analysis for purposes of the plan and the
21 information -- his assessment of the information in it.

22 So does anyone wish to cross-examine Mr. DelConte?

23 MR. GOLDMAN: Good morning, Your Honor. Irve
24 Goldman for the State of Connecticut. Yes, I wish to cross-
25 examine.

1 THE COURT: Okay. You can go ahead.

2 MR. GOLDMAN: Thank you.

3 CROSS-EXAMINATION OF JESSE DELCONTE

4 BY MR. GOLDMAN:

5 Q Good morning, Mr. DelConte. My name is Irve Goldman.

6 I represent the State of Connecticut in this case.

7 According to Paragraph 11 of your declaration, your
8 assignment in this case was to evaluate whether the Debtor's
9 plan satisfies the best interests of creditors test under
10 Section --

11 THE COURT: Can I interrupt you, Mr. Goldman?

12 MR. GOLDMAN: Yes.

13 THE COURT: Just to be clear, when you are
14 referring to the declaration -- and I think this should go
15 for everyone who wishes to cross-examine Mr. DelConte --
16 let's assume unless you say otherwise that the declaration
17 you're referring to is the expert declaration, not the --

18 MR. GOLDMAN: Yes, Your Honor.

19 THE COURT: Not the summary of the plan. That's
20 the fact declaration.

21 MR. GOLDMAN: Yes, Your Honor.

22 THE COURT: Okay. So I'm sorry to interrupt you.
23 I just wanted to make it clear which declaration we were
24 referring to. But go ahead.

25 MR. GOLDMAN: Thank you. I'll begin over again

1 for clarity.

2 BY MR. GOLDMAN:

3 Q Mr. DelConte, your assignment in this case according to
4 Paragraph 11 of your declaration was to evaluate whether the
5 Debtor's plan satisfies the best interests of creditors test
6 under Section 1129 of the Bankruptcy Code. Is that correct?

7 A That is correct.

8 Q And just so we have a mutual understanding, you would
9 agree with me that that test requires the plan proponent to
10 establish that for those creditors that have not accepted
11 the plan, the recovery they will receive under the plan will
12 not be less than what they would receive in a Chapter 7 case
13 of the Debtors, correct?

14 A That's correct.

15 Q Okay. And in a Chapter 7 case of Purdue and its Debtor
16 affiliates, there would be no third party releases, correct?

17 A That's correct.

18 Q Okay. Could you turn to Appendix A of your report,
19 which is your liquidation analysis? And specifically Page
20 5, Note 3.

21 A Okay.

22 Q Now, you say there that to the extent relevant for
23 purposes of the best interest of creditors test, the
24 liquidation analysis assumes direct claims against the
25 shareholder release parties would be retained. Is there

1 some question in your mind as to whether the retention of
2 direct claims in a Chapter 7 case is relevant to the best
3 interest of creditors test?

4 A I'm sorry, there was a little bit of noise. Could you
5 repeat the question?

6 Q Is there some question in your mind as to whether the
7 retention of these direct claims in a Chapter 7 case would
8 be relevant to the best interest of creditors test?

9 A I believe that to the extent that there is value to
10 those claims, they could be relevant to the best interest of
11 creditors test.

12 Q In Note 3 which we've been looking at, you refer the
13 reader to a section of the disclosure statement for a
14 discussion of the value of such claims in a Chapter 7
15 scenario. So my question is in Exhibit 1 or in your
16 liquidation analysis that is attached to the report, you
17 don't account for any value for the direct claims of
18 creditors against the shareholder release parties, correct?

19 A That's correct.

20 Q So to the extent these claims are relevant to a best
21 interest of creditors test, you are just deferring to the
22 discussion of the value in the disclosure statement?

23 A That's correct. We did not feel that we were able to
24 adequately value those claims and that they were estimable
25 for purposes --

1 Q All right. It just calls for a yes or no answer. Now,
2 the disclosure statement at the section you cited also
3 refers creditors to statements that were filed by the
4 Sacklers in support of the Debtor's disclosure statement.
5 So are you also deferring to those statements to the extent
6 the retention of these direct claims is relevant to the best
7 interest of creditors test?

8 A I understand that the Sacklers have provided various
9 defenses against those claims, and that's what's referenced
10 in that section.

11 Q And that's what you deferred to in your liquidation
12 analysis, correct?

13 A One of the facts surrounding the direct claims would be
14 both the claims that certain parties have as well as the
15 potential defense against --

16 Q Well, could I just interrupt you here? I'd like an
17 answer to my question.

18 A Yes.

19 Q That is what you also deferred to in your liquidation
20 analysis. Yes or no?

21 A Yes.

22 Q To assess the value of direct claims against the
23 Sacklers in a Chapter 7 case, do you think it's a wise
24 choice to rely on statements of the targets of those direct
25 claims for claiming innocence?

1 A I think that is one of the facts surrounding the direct
2 claims. I don't rely upon what they have laid out as far as
3 their defenses. You know, I would evaluate that given that
4 they are coming from the Sackler parties.

5 Q You would take it with a grain of salt is what you're
6 saying in effect?

7 A Yeah, I think that's a good way to frame it.

8 Q Okay. And so far as you were aware, was any attempt
9 made by you or anyone else to ascertain the universe of
10 creditors in these estates that are asserting claims against
11 the Sackler?

12 A I know that there have been various lawsuits filed that
13 have included the shareholder parties and there has been
14 615,000 claims filed in the he case. So I would say that,
15 you know, they could all potentially have claims against the
16 shareholder parties. But outside of that, we haven't done
17 an analysis to try to evaluate which of those specific
18 parties would potentially have claims.

19 Q And for the liquidation analysis that you did, did
20 anyone -- you or anyone from the Debtors undertake to come
21 up with an estimate of the value of the direct claims of
22 Purdue creditors against any of the Sacklers?

23 A Based on the facts that there's, as I said before, a
24 number of different claims that third parties could
25 potentially have against the shareholders as well as the

1 number of potential defenses that the shareholders could
2 have against those claims and the fact that there has not
3 been to date any trial taken to judgement that has laid out
4 what potential damages could be allocated based on those
5 claims, we didn't feel that it was possible to adequately or
6 accurately estimate those claims.

7 Q Is that a long way of saying no?

8 A We --

9 MR. KAMINETZKY: Your Honor, I'm going to
10 (indiscernible) colloquy.

11 THE COURT: I'm sorry?

12 MR. KAMINETZKY: He answered the question and Mr.
13 Goldman's giving him a hard time --

14 THE COURT: He can answer it -- this is another
15 question.

16 BY MR. GOLDMAN:

17 A We considered the claims. We just did not feel
18 comfortable that we could accurately estimate a value for
19 those claims.

20 THE COURT: So you didn't, right?

21 THE WITNESS: So we did not include a value for
22 those claims in the deliberation analysis.

23 THE COURT: Okay.

24 BY MR. GOLDMAN:

25 Q And so the disclosure statement narrative is expected

1 to address all the direct claims generically, is that
2 correct?

3 A That's correct.

4 Q Now, you would agree with me that damage experts are
5 routinely retained to give expert testimony in litigation
6 cases, are they not?

7 A They are.

8 Q Yet one was not retained here for evaluating potential
9 damages to the dissenting states' claims or other direct
10 claims against the Sacklers, correct?

11 A I know that there has been a number of professionals
12 hired by the Debtors that have investigated a number of the
13 various potential claims in conjunction with the evaluation
14 of the shareholder settlement. I'm not aware of whether or
15 not they evaluated the direct -- how they evaluated the
16 direct claims.

17 Q Are you aware if any expert was retained to evaluate
18 the value of those direct claims?

19 A I am not aware.

20 Q Would it surprise you to know that between the Debtors
21 and the Sacklers, they retained a total of 12 experts for
22 this confirmation hearing?

23 A I know that there have been a significant number of
24 expert reports filed in conjunction with the confirmation
25 hearing.

1 Q Now, it's been established at the outset of the hearing
2 that the dissenting states here are Connecticut, Washington,
3 Oregon, Maryland, Rhode Island, Delaware, Vermont,
4 California, New Hampshire, and the District of Columbia. As
5 part of your best interest test assignment, did you
6 determine the amounts those particular states would receive
7 under the plan?

8 A Under the plan, they would receive a recovery from the
9 National Opioid Abatement Trust, which in the plan has an
10 estimated recovery of approximately \$4 billion. I am not
11 aware of allocations that have been made with the National
12 Opioid Abatement Trust and how those will go to the specific
13 states, but that is generally the pot of money that they
14 will be paid out.

15 Q So it would be a simple multiplication exercise of
16 whatever allocation percentage of the particular state
17 multiplied by the gross amount. Is that what you're saying?

18 A Depending on how that -- as I said, depending on how
19 the allocation is set up in the NOAT, that would determine
20 how the ultimate dollars are distributed to the various
21 states. To the extent it's simply just a percentage by
22 state, then yes, it would just be the amount of total
23 dollars that go to the National Opioid Abatement Trust times
24 that percentage.

25 Q Okay. And you may have answered this, but I just want

1 to make sure. You're not aware of any attempt having been
2 made to estimate or project what the dissenting states would
3 recover if they were permitted to continue their actions or
4 initiate new actions against the Sacklers, correct?

5 MR. KAMINETZKY: Object. He (indiscernible) twice
6 already.

7 THE COURT: I'm sorry, what did you say, Mr.
8 Kaminetzky? I didn't hear that.

9 MR. KAMINETZKY: He asked that twice already, the
10 same question. So I object as asked and answered.

11 MR. GOLDMAN: I just want to make clear. I think
12 I asked for all the states for the initial question. Now
13 I'm focusing in on --

14 THE COURT: You can answer as to whether there was
15 a state-by-state for the dissenting states' analysis under
16 1129(a)(7) of what they would get on account of their
17 claims.

18 BY MR. GOLDMAN:

19 A We did not -- in conjunction with the Chapter 7
20 liquidation as shown in the exhibit, the expectation in a
21 liquidation would be that they would receive zero dollars on
22 their claims. And with respect to the direct claims that we
23 were unable to estimate given the (indiscernible), you know,
24 those -- we obviously did not assign a value to what those
25 potential claims could be. But to the extent that those

1 states wanted to -- those states were allowed to go after
2 those values, that would obviously put the rest of the plan
3 at risk and would cause the shareholder settlement to fall
4 apart and would potentially cost the estate billions and
5 billions of dollars.

6 Q Mr. DelConte, in a Chapter 7 scenario where states like
7 Connecticut would be free to pursue their direct claims
8 against the Sacklers, it's conceivable, is it not, that more
9 and more of the Sacklers themselves could become insolvent?

10 A That would be a possibility.

11 Q Right. There would just have to be a judgment or a
12 collection of judgements in an aggregate amount that
13 exceeded the net worth of any individual family member,
14 correct?

15 A Correct.

16 Q Are you aware that in documents made available in this
17 case by the Sackler Side A and Side B families, their net
18 worth was reported to be about \$10.6 billion?

19 A Yes.

20 Q Okay. So you would just need a judgement or judgments
21 that were greater than that amount if you were looking it in
22 the aggregate. But if you looked at it individually, it
23 would be a different calculus. You'd have to look at that
24 individual family member's net worth and then compare that
25 to the amount of the judgment or judgments, correct?

1 A Correct.

2 Q Wouldn't that expose them to potential personal
3 liabilities or personal bankruptcies?

4 A Under the --

5 MR. KAMINETZKY: Objection. Beyond the scope of
6 his testimony and calls for a legal conclusion. I'm not
7 sure --

8 THE COURT: Well, I just -- I mean, it's -- I
9 guess isn't this the same question as it's conceivable that
10 one or more of the Sacklers themselves would become
11 insolvent? I mean, you were just putting math to that.
12 Right, Mr. Goldman?

13 MR. GOLDMAN: Correct.

14 THE COURT: If there is a judgement you're
15 speaking of that exceeds their assets, they would become
16 insolvent.

17 MR. GOLDMAN: Yes.

18 THE COURT: So I think it's -- you've covered this
19 already.

20 MR. GOLDMAN: Your Honor, if I may, I'm getting at
21 a different angle here. And I think he's certainly able to
22 answer as an expert in this field and experienced in
23 bankruptcy cases that if one becomes insolvent -- I would
24 think that question could be answered. And then I have a
25 follow-up.

1 THE COURT: Well, I think the answer is obvious.
2 If a judgement against an individual is high enough, it goes
3 -- he or she goes bankrupt, or could file bankruptcy.

4 MR. GOLDMAN: Okay. I will move on to my next
5 question with that, Your Honor. Thank you.

6 THE COURT: Okay.

7 BY MR. GOLDMAN:

8 Q Mr. DelConte, do you know if any analysis was done as
9 to whether the trust assets of any of the Sackler members
10 would become property of their individual bankruptcy estate
11 if they ended up having to file bankruptcy?

12 A I'm not aware.

13 MR. GOLDMAN: I have no further questions, Your
14 Honor.

15 THE COURT: Okay. All right. Does anyone else
16 want to cross-examine Mr. DelConte?

17 MR. HIGGINS: Yes, Your Honor. Ben Higgins for
18 the United States Trustee. May I proceed?

19 THE COURT: Yes.

20 MR. HIGGINS: Thank you, Your Honor.

21 BY MR. HIGGINS:

22 Q Good morning, Mr. DelConte. My name is Benjamin
23 Higgins and I represent the United States Trustee. Can you
24 hear me okay?

25 A Yes.

1 Q Good morning, Mr. Higgins. Thank you. In your
2 declaration -- and I should specify your facts declaration,
3 the one that was filed at Docket 3456, you testify regarding
4 the Debtor's insurance policies that would be transferred to
5 the Master Disbursement Trust. Is that correct?

6 A That's correct.

7 Q And you testified that these insurance policies can be
8 lumped into two categories, general liability insurance
9 policies and directors and officers liability insurance
10 policies. Is that right?

11 A That's correct.

12 Q Thank you. And in your declaration, you testify about
13 the general categories of parties that may qualify as named
14 insureds or additional insureds under the Debtor's insurance
15 policies. Is that right?

16 A That's correct.

17 Q Are you familiar with the plan's definition of
18 shareholder released parties and the list of certain
19 shareholder released parties attached to the disclosure
20 statement at Exhibit H?

21 A I am generally aware.

22 Q Are you aware that it contains hundreds of individuals
23 and entities, including unnamed children, grandchildren,
24 unnamed entities and individuals to which assets were
25 transferred, and unnamed businesses and entities owned by

1 some of the identified released parties?

2 A I am generally aware of that.

3 Q Isn't it true that in your declaration, you did not
4 identify by name any of the shareholder released parties as
5 being covered by the Debtor's insurance policies?

6 A I did not name any -- I did not include any of the
7 names of the various people that would be covered under the
8 Debtor parties. However, I am aware that from some of the
9 work I've done related to the Debtor's D&O policies that
10 there are a number of shareholder parties listed on those
11 policies.

12 Q And are you aware of how many of the shareholder
13 released parties are covered by the Debtor's insurance
14 policies?

15 A I am aware that there was a pretty significant number
16 of parties on the Debtor's prepetition insurance policies
17 just given the way that they were structured on the
18 prepetition basis. I can't give you a number of how many of
19 them are covered.

20 Q So sitting here today, you don't know how many.

21 A I would say that the -- from the declarations and in
22 the plan and disclosure statement, you know, I can tell you
23 that there were approximately I want to say a dozen
24 shareholders who at one time or another were directors or
25 officers of the business. But I can tell you that at least

1 those 12 would have been listed on the Debtor's D&O
2 policies.

3 Q So about 12 out of the hundreds of parties listed on
4 the shareholder released parties list?

5 A There are more people on the shareholder release
6 parties list than there would have been on the Debtor's D&O
7 policies. The other -- and again, I do not know every name
8 that's -- everything that's listed on the shareholder
9 release parties list. But to the extent that there is other
10 companies listed that are formerly owned by the
11 shareholders, the debtor's general liability policies I know
12 have a large number of companies listed on those policies.
13 Not necessarily the D&O ones, but those policies have a
14 number of other named insureds.

15 Q But sitting here today, you can't specify how many
16 would be covered by the general liability insurance
17 policies?

18 A That's correct. I can't give you an exact number.

19 Q Thank you. Isn't it true that the insurers that issued
20 the Debtor's insurance policies have either denied coverage
21 for opioid claims subject to the Chapter 11 or reserved
22 their rights to do so?

23 A I am aware, correct.

24 Q Thank you, Mr. DelConte.

25 MR. HIGGINS: No further questions, Your Honor.

1 THE COURT: Okay, very well. Does anyone else
2 want to cross-examine Mr. DelConte?

3 MR. UNDERWOOD: Very briefly, Your Honor. Allen
4 Underwood, counsel for the Canadian Municipal Creditors and
5 the Canadian First Nations claimants.

6 BY MR. UNDERWOOD:

7 Q Mr. DelConte, isn't it correct that there is no
8 reference to a review or estimate of the Chapter 7 value of
9 prepetition transfers under Section 548 of the Bankruptcy
10 Code or under applicable state law? And with that I'm
11 referencing fraudulent transfers.

12 THE COURT: I'm sorry, where? I didn't -- that
13 just seemed to be a hanging -- no reference where?

14 MR. UNDERWOOD: Oh no, by reference to Section 548
15 of the Code, I'm making reference to fraudulent conveyances.

16 THE COURT: No, but you're saying -- but what are
17 you pointing Mr. DelConte to when you refer to fraudulent
18 transfers?

19 MR. UNDERWOOD: I apologize. His expert report,
20 Your Honor.

21 THE COURT: Okay, the liquidation analysis?

22 MR. UNDERWOOD: Correct. Exhibit -- yes.

23 THE COURT: Okay. And so just so -- tell me if
24 I'm getting this wrong. Are you asking Mr. DelConte whether
25 there is any reference to causes of action or recoveries or

1 hypothetical recoveries under causes of action for
2 fraudulent transfers under the Bankruptcy Code 548 or 544 in
3 his liquidation analysis?

4 MR. UNDERWOOD: That's correct, Your Honor. I
5 apologize. I didn't phrase it --

6 THE COURT: Okay. You can answer that question,
7 Mr. DelConte.

8 BY MR. UNDERWOOD:

9 A The causes of action that the estate would have against
10 the shareholders on behalf of the fraudulent conveyance on
11 litigation, those are referenced in the he litigation
12 analysis. And the recoveries are what is assumed under the
13 Sackler settlement in the shareholder settlement on the --
14 in the liquidation analysis.

15 Q And did you perform that analysis with regard to any
16 creditors other than what I would call insiders or the
17 Sacklers?

18 THE COURT: You mean transferees?

19 MR. UNDERWOOD: Correct.

20 BY MR. UNDERWOOD:

21 Q So, Mr. DelConte, was your universe just the Sacklers
22 or was it all potential recipients of fraudulent transfers?

23 A We looked at the potential value for causes of action
24 against the shareholders on behalf -- that would be one of
25 the potential causes of action against the shareholders.

1 And the valuation of those is included in the liquidation
2 analysis under the Sackler settlement.

3 THE COURT: And let me just -- when you say the --
4 when you say the shareholder, do you mean just the people,
5 or do you mean the companies that they own? People have
6 used the term shareholders or Sacklers to include those.
7 Sometimes they don't include them. What do you mean when
8 you say the Sacklers or the shareholders?

9 THE WITNESS: I mean the transfers to the
10 shareholders themselves, the Sacklers.

11 THE COURT: Okay.

12 BY MR. UNDERWOOD:

13 Q So did you look at transfers to any parties other than
14 the Sacklers during the applicable fraudulent conveyance
15 period?

16 A I should say that one of the other things -- to Your
17 Honor's question, one of the other things that we obviously
18 looked at that I believe (indiscernible) put a declaration
19 in was other transfers of value that went to the IAC
20 companies, which indirectly benefitted the shareholders. So
21 we were looking at the transfers of value that went to the
22 IACs as well.

23 MR. UNDERWOOD: And I have only one other
24 question, Your Honor.

25 BY MR. UNDERWOOD:

1 Q Did you perform an analysis in the context of a Chapter
2 7 liquidation of applicable potential Section 547 claims,
3 preference claims that would be available to a liquidating
4 trustee?

5 A We have not included any value for those types of
6 claims in this analysis.

7 Q What was the basis for you not viewing that as a
8 liquidation asset?

9 A We didn't believe that there would be material value to
10 come into the estate on behalf of those actions and that
11 those would likely be eaten up by potential fees going after
12 the -- in prosecuting those potential causes of action. And
13 because of that, we didn't think it had a material effect on
14 what the ultimate conclusions were drawn from the
15 liquidation analysis.

16 Q Did you go so far as to actually estimate the potential
17 preference recovery and the potential cost of that
18 litigation?

19 A We did not.

20 Q No further questions. Thank you.

21 THE COURT: Okay. Does anyone else want to cross-
22 examine Mr. DelConte? Okay. Is there any redirect?

23 MR. KAMINETZKY: Very brief, Your Honor. Again,
24 Ben Kaminetzky, Davis Polk, for the Debtors.

25 REDIRECT EXAMINATION OF JESSE DELCONTE

1 BY MR. KAMINETZKY:

2 Q Mr. DelConte, Mr. Goldman's first question was have you
3 confirmed that your liquidation analysis does not account
4 for value of the third party claims that, for example, the
5 State of Connecticut or the other dissenting states or
6 objecting states would have or potentially have against the
7 shareholders. Do you recall that testimony?

8 A I do.

9 Q And could you tell the Court why it is that you didn't
10 account or put a value on those causes of action?

11 A We did not. We determined that we couldn't adequately
12 estimate the value of those potential claims, you know,
13 based on the fact that, as I testified to before and as laid
14 out in the disclosure statement, the fact that there's a
15 number of different causes of action that various third
16 parties could have against the shareholders, as well as a
17 number of defenses that the shareholders could have against
18 those particular causes of action and the fact that none of
19 those causes of action have been taken to judgement to date.
20 We didn't think that we were accurately able to estimate
21 what that total value could be, so we determined that we
22 should not include that in the liquidation analysis.

23 Q Now just so the record is clear, is the reason you
24 didn't assign value because of the Sackler's statements of
25 their defenses to those potential causes of action?

1 A No.

2 MR. KAMINETZKY: That's all I have, Your Honor.

3 THE COURT: Okay. Any recross on that?

4 MR. UNDERWOOD: I would just ask the witness, Your
5 Honor...

6 RECROSS-EXAMINATION OF JESSE DELCONTE

7 BY MR. UNDERWOOD:

8 Q Mr. DelConte, it's certainly possible to have retained
9 another expert who could have done some sort of evaluation
10 of the claims or the damages that follow from the claims,
11 correct?

12 A I think that it would have been very difficult for any
13 expert to come in and attempt to, you know, accurately put a
14 value on it, but the Debtors could have hired somebody.

15 Q And you don't do any damage analysis, do you?

16 A I did not.

17 MR. UNDERWOOD: No further questions, Your Honor.

18 THE COURT: Okay. All right. You can sign off,
19 Mr. DelConte.

20 THE WITNESS: Thank you.

21 MR. KAMINETZKY: Your Honor, since the next
22 witness is Mr. Joe Turner, I will turn it over to Mr.
23 McClammy to present this (indiscernible).

24 MR. MCCLAMMY: Good morning, Your Honor. Jim
25 McClammy on behalf of the Debtors. As Mr. Kaminetzky noted,

1 our next witness is Joseph L. Turner, managing director at
2 PJT Partners LP. I believe he is joining.

3 THE COURT: Okay, I see him there. Good morning,
4 Mr. Turner. Would you raise your right hand, please? Can
5 you hear me, Mr. Turner?

6 MR. TURNER: I can, Your Honor. Can you hear me
7 okay?

8 THE COURT: Yes. Would you raise your right hand,
9 please? Do you swear or affirm to tell the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 MR. TURNER: I do.

12 THE COURT: Okay. And it's Joseph, p-h, next word
13 T-u-r-n-e-r?

14 MR. TURNER: That's right.

15 THE COURT: You can take your hand down. That's
16 fine.

17 MR. TURNER: Thanks, Your Honor.

18 THE COURT: And, Mr. Turner, you submitted a
19 declaration in this matter consisting of your expert
20 testimony. It's dated August 5th, 2021. Under my order
21 establishing procedures for this hearing, it's intended to
22 be your direct testimony. Sitting here today on August 13,
23 is there anything in it that you would wish to change?

24 MR. TURNER: No, there's not, Your Honor.

25 THE COURT: Okay.

1 MR. MCCLAMMY: And, Your Honor, I would note that
2 you may have mentioned that it was submitted as expert
3 testimony, but we have Mr. Turner here as a fact witness.

4 THE COURT: Oh, I'm sorry. Let me just -- okay,
5 fine. Even as to his valuation analysis?

6 MR. MCCLAMMY: It's being presented as evidence of
7 what was done and presented for the special committee's
8 consideration and for inclusion in the disclosure statements
9 and not presented as an expert valuation.

10 THE COURT: Okay. Thank you for that correction.
11 All right, does anyone object to Mr. Turner's declaration
12 being admitted as his direct testimony?

13 All right, then it's admitted.

14 Does anyone wish to question Mr. Turner?

15 MR. EDMUNDS: Just briefly, Your Honor. Brian
16 Edmunds for Maryland.

17 THE COURT: Okay.

18 CROSS-EXAMINATION OF JOSEPH TURNER

19 BY MR. EDMUNDS:

20 Q Mr. Turner, in your declaration, you said that PJT
21 Partners considered four scenarios. Is that right?

22 A That's right.

23 Q And are there other alternative scenarios that PJT
24 Partners considered?

25 A So at the direction of the Special Committee, we did

1 look at further variations of Scenario 3. But as you think
2 of them as kind of these broad scenarios, no, there were no
3 additional scenarios beyond the four and the variations
4 thereof.

5 Q No additional ones that you considered. Is that right?

6 A Not as part of this analysis. That's correct.

7 Q It's possible there could be other variations that
8 could be considered. Is that right?

9 A That's correct, yeah.

10 Q The valuation that you express in Paragraph 22 of your
11 declaration that I understand is not being submitted as an
12 expert valuation, but could you tell me if that included any
13 assessment of the value of the approved claims against its
14 shareholders?

15 A No, it does not. That's a valuation of the operating
16 assets of the business.

17 Q Okay. Thank you very much.

18 MR. EDMUNDS: No further questions, Your Honor.

19 THE COURT: Let me just make sure I heard you
20 correctly, Mr. Edmunds. Did you say with regard to
21 Paragraph 22, you asked whether that assessment of value did
22 or did not include the estate's claims against the
23 shareholders?

24 MR. EDMUNDS: A value for the estate's claims
25 against --

1 THE COURT: The estate's claims --

2 MR. EDMUNDS: -- the shareholders. Yes. Yes,
3 Your Honor.

4 THE COURT: Okay. Okay. Does anyone else want to
5 cross-examine Mr. Turner?

6 All right. Any redirect?

7 MR. MCCLAMMY: No, Your Honor.

8 THE COURT: Okay, very well. So, Mr. Turner, you
9 can sign off.

10 MR. TURNER: Thank you, Your Honor.

11 THE COURT: Could I just -- I know we are moving
12 on to the next witness, but I want to make something clear
13 for those people who are not that familiar with the trial
14 procedures for this hearing and their implication as far as
15 the record for this hearing. If you've been listening,
16 you'll note that the direct testimony by the witnesses has
17 been submitted by declaration or affidavit under penalty of
18 perjury. And I've sworn in each witness and they've
19 attested to that fact.

20 That obviously saves an enormous amount of time in
21 that the party offering the witness does not need to go
22 through the direct. It's already a matter of record on the
23 docket. To some extent, it also helps those who are going
24 to do cross-examination prepare for that cross-examination.
25 However, those who only listen to the trial don't have the

1 benefit of those declarations. They do, however, have the
2 ability to go to the docket of the case and read them at
3 their leisure to see what the declarations state. Obviously
4 the Court reads the declarations, the parties read the
5 declarations. And I'm assuming those who have a stake in
6 the case read the declarations since that's the evidence
7 that the Debtor and its allies in this case, such as the
8 party offering the next set of witnesses, are offering in
9 support of confirmation of the plan.

10 But if you want to know more about that testimony,
11 what you need to do is go to the docket, which you can do
12 easily, and pull up the declaration and read it.

13 Okay, so are we ready to proceed to the next
14 witness?

15 MR. KAMINETZKY: Yes. As we just mentioned,
16 subject to being -- having to recall Ms. Simmonds once we've
17 worked it out with the motion in limine, the Debtors are
18 finished with their witnesses and I'll turn it over to Mr.
19 Eckstein.

20 THE COURT: Okay, very well.

21 MR. ECKSTEIN: Your Honor, good morning. This is
22 Kenneth Eckstein with Kramer Levin on behalf of the Ad Hoc
23 Committee of consenting states and governmental entities.

24 As Your Honor is aware, the Ad Hoc Committee --

25 THE COURT: Sorry. There is a hospital near the

1 courthouse and this happens a couple of times every day with
2 the --

3 MR. ECKSTEIN: I understand. That's fine, Your
4 Honor.

5 THE COURT: The ambulance going by.

6 MR. ECKSTEIN: I don't know if you can hear me
7 now, Your Honor.

8 THE COURT: I can hear you fine.

9 MR. ECKSTEIN: Your Honor, the Ad Hoc Committee
10 has submitted five declarations in support of confirmation
11 addressing various issues that have been joined in
12 connection with confirmation of the plan. And we've also
13 submitted a memorandum of law that addresses several of
14 those issues. And we'll deal with those in connection with
15 closing arguments.

16 At this point, I want to just introduce to Your
17 Honor two of my colleagues, Jonathan Wagner and David
18 Blabey, as well as Jenna Hudson of the Gilbert firm. And
19 they will be handling the next few witnesses that will be
20 giving testimony. One of our witnesses is not available
21 today, Ms. Jayne Conroy. And I believe she is scheduled to
22 testify on Monday.

23 So unless Your Honor has any questions for me, I
24 am pleased to turn it over to Jonathan Wagner.

25 THE COURT: Well, I guess one question only, Mr.

1 Eckstein, which is there are a lot of ad hoc committees in
2 this case. Again, the people that have been living with
3 this case know I think the members of your ad hoc committee.
4 But could you just describe it so that the record is clear
5 as to who your client is?

6 MR. ECKSTEIN: Sure, Your Honor. The committee
7 that I am representing is the Ad Hoc Committee of Consenting
8 States and Governmental Entities. And as parties who are
9 involved in the case are aware, the Ad Hoc Committee
10 consists of 16 members including (indiscernible) states and
11 the PEC as well as six local governmental entities, cities,
12 and counties. And we were described as the Ad Hoc Committee
13 of Consenting States since at the outset of the case we were
14 the party that had negotiated the framework for what has now
15 evolved into the Plan of Reorganization, including the
16 initial terms of an agreement that had been reached with the
17 Sacklers subject to the work that had been done by both the
18 Ad Hoc Committee as well as the UCC and the Ad Hoc Committee
19 of Non-Consenting States. And we have continued to be
20 consenting to (indiscernible) throughout the case and have
21 worked with the company as well as with the other parties in
22 the case closely not only on the development of the Sackler
23 settlement, but also on issues that will be the subject of
24 testimony today, including the abatement plan, the
25 allocation among states, as well as a wide variety of other

1 issues pertaining to the creation of Newco and other items
2 that are essential to the plan of reorganization.

3 So Your Honor will hear testimony from several Ad
4 Hoc Committee witnesses that will address allocation, the
5 abatement, the attorney fee structure, as well as a variety
6 of other issues that were principally focused on by the
7 members of the Ad Hoc Committee over the entire duration of
8 the case.

9 THE COURT: Okay. And just one other question.
10 The PEC that you referred to, that's -- correct me if I'm
11 wrong, that's the Plaintiff's Executive Committee in the
12 multidistrict litigation that was pending in the Ohio
13 District Court before the filing of this Chapter 11 case?

14 MR. ECKSTEIN: That is correct, Your Honor. They
15 were actively involved, as Your Honor knows, in the
16 litigation from its inception and were integral members of
17 the negotiations that took place leading up to the
18 bankruptcy, including the negotiations that took place in
19 Cleveland during the spring and summer of 2019.

20 THE COURT: Okay.

21 MR. ECKSTEIN: And they've remained active members
22 of the Ad Hoc Committee throughout the Chapter 11.

23 THE COURT: Okay, very well. So I'm not sure
24 whether Mr. Blabey or Mr. Wagner is going to do this, but
25 I'm happy to proceed now with your witness, who is Mr.

1 Guard?

2 MR. ECKSTEIN: Mr. John Guard from the State of
3 Florida. He is Chief Deputy for the State of Florida. And
4 my partner, Jonathan Wagner, is going to be handling that
5 direct.

6 THE COURT: Okay. So, Mr. Guard, would you raise
7 your right hand, please? Do you swear or affirm to tell the
8 truth, the whole truth, and nothing but the truth, so help
9 you God?

10 MR. GUARD: I do.

11 THE COURT: Okay. And it's John, J-o-h-n, new
12 word, G-u-a-r-d?

13 MR. GUARD: Yes, sir.

14 THE COURT: Okay. Mr. Guard, you submitted a
15 declaration in this matter. It's dated August 5, 2021.
16 Under my order establishing procedures for the hearing, it's
17 intended to be your direct testimony in the hearing.
18 Knowing that and sitting here on August 13, is there
19 anything in your declaration that you would wish to change?

20 MR. GUARD: No, Your Honor.

21 THE COURT: Okay. So does anyone object to the
22 admission of Mr. Guard's declaration as his direct
23 testimony? All right. I will admit it.

24 Does anyone want to cross-examine Mr. Guard?

25 MR. WAGNER: Your Honor, before we start this,

1 it's Mr. Wagner. Before Mr. Cahn begins his cross-
2 examination, we got a few minutes ago, really, after the
3 hearing this morning began, a document that Mr. Cahn wishes
4 to use during the cross-examination of Mr. Guard.

5 The document is a memorandum from Mr. Guard to
6 other state attorneys general. I don't know why we're just
7 receiving it now for use as cross-examination. The document
8 implicates the common interest privilege issues that we've
9 flagged for Your Honor. And if West Virginia wanted to --
10 if Mr. Cahn and West Virginia wanted to use this document,
11 they really had a responsibility to let us know sometime
12 before this hearing began.

13 We heard from the State of Washington last night.
14 They want to use the document. That was fine. The document
15 is probably helpful to the Ad Hoc Committee, but that's not
16 the point. The point is that the document is protected by
17 the common interest privilege. Two agreements signed by
18 west Virginia. The document says on it internal,
19 deliberative, do not produce. And the attorneys general,
20 some of whom are on this call, they jealously guard their
21 common interest.

22 In the few minutes we've had between the time we
23 got the document and now, we've checked with members of our
24 committee and they object to the use of the document. I
25 would ask either -- it's a document communication amongst

1 lawyers protected by common interest. I would ask that
2 either Your Honor exclude the document or that the
3 examination with respect to the document be upheld in
4 abeyance pending Your Honor's ruling with respect to the
5 document.

6 THE COURT: Okay. Mr. Troop, I know you were
7 interested not in this document, but in other documents that
8 implicated the common interest agreement and privilege. Do
9 you have anything to say on this one?

10 MR. TROOP: Yes, Your Honor. First of all, I want
11 to thank Mr. Wagner and his colleagues for sending me the
12 document. It was not produced to us by West Virginia or its
13 counsel, notwithstanding the fact that we've engaged on
14 common interest privilege issues.

15 I've only had a chance to read it because I just
16 saw the email literally as Mr. Guard's picture illuminated
17 on the screen. But I do agree, Your Honor, this is the
18 exact kind of document and communication that is subject to
19 the common interest agreements between the states. And
20 whether it's helpful or hurtful to the AHC's position or
21 West Virginia's position. Those agreements have a very
22 significant purpose to permit the kind of discussions among
23 states that can lead to resolution. And as a result, I
24 would join the request that it be excluded completely. Or
25 if not, we can continue these conversations more either in-

1 camera, or in your chambers, or nay way that you think most
2 appropriate.

3 THE COURT: Okay. Mr. Cahn, is there any dispute
4 that this is covered by the common interest agreement?

5 MR. CAHN: No, Your Honor. But -- and I didn't
6 necessarily intend to argue the merits of whether or not the
7 confidentiality provisions of these pre-bankruptcy common
8 interest agreements should continue to hold under the
9 current circumstances. I didn't intend to argue the merits
10 of that now. And actually, I only have one or two questions
11 that I intended to ask Mr. Guard based on this document
12 (indiscernible).

13 Your Honor, I would observe that Mr. Guard's
14 declaration clearly puts front and center all of the
15 negotiations that took place between various states over the
16 four-plus years that these issues have been considered. And
17 I think at this point in time to exclude any document or any
18 evidence that (indiscernible) this process would be giving
19 parties other than the Ad Hoc Committee and the Debtors an
20 unfair advantage here.

21 Nevertheless, having said that, I am happy to hold
22 this issue in abeyance for further discussion. Because as I
23 said, I don't think the Court necessarily wants to engage on
24 the merits of this issue at this time.

25 THE COURT: I mean, look, I think the parties to

1 that agreement have their rights under the agreement. If
2 they can waive them, then I think they have to do it
3 collectively. And I'm just hearing that that's not been
4 done with regard to this. So I'm not sure what it means to
5 hold it in abeyance. Mr. Guard is scheduled to testify
6 today. I'm sure he is a busy person. This hearing is on a
7 timetable to be finished. It just seems to me that under
8 those circumstances that the document should be excluded.

9 MR. CAHN: Well, of course I don't agree with
10 that. But what I will do is let me proceed with my cross-
11 examination. And, you know, perhaps we'll see at the end of
12 the cross that we won't need to refer to this document.

13 THE COURT: Well, that's fine. And perhaps during
14 that period the parties to the agreement may decide to waive
15 it. I don't know. But if they don't, then I don't see
16 where we go beyond what I've already ruled.

17 So why don't you go ahead, Mr. Cahn, with cross.

18 MR. CAHN: Very well, Your Honor.

19 THE COURT: Okay.

20 CROSS-EXAMINATION OF JOHN GUARD

21 BY MR. CAHN:

22 Q Good morning, Mr. Guard. Can you hear me clearly?

23 A I can.

24 Q Thank you. You say in your declaration that you first
25 engaged with the allocation issues in late 2018. And in

1 Paragraph 12, you described the elements that relate to the
2 proposal as you first encountered it. And I note that one
3 of the factors that you identify is state population. The
4 other three factors, were the other three factors also
5 dependent to a considerable extent on population?

6 A No in the sense that -- I mean, I guess I don't
7 necessarily understand your question. I mean, the other
8 three factors deal with raw numbers. And I guess to the
9 extent that somehow those raw numbers increased because
10 there are mor people in certain states and less people in
11 other states, if that's what your question is getting at,
12 then I guess that answers your question. But no, they are
13 raw numbers of the number of occurrences that occur in each
14 state.

15 So the first factor was the morphine milligram
16 equivalents. So that would be the number of morphine
17 milligram equivalents, the number of pills for lack of a
18 better term, shipped into a state. So there may be some
19 impact that having more people, there might be more pills
20 prescribed. But that would be the extent of it.

21 Q Right. Okay. And I'm sorry if my question wasn't
22 clear. But, for example, in Paragraph 27, you referred to
23 an example by comparing the populations of California and
24 West Virginia and noting the substantial difference in per
25 capita opioid death rate in those two states. And

1 nevertheless, applying those figures as you've done in your
2 -- I'm sorry, Footnote 1 on Page 9 of your declaration, you
3 note that California would have roughly three times the
4 number of deaths that West Virginia had even though West
5 Virginia, according to your figures, West Virginians have
6 eight times the likelihood of dying from opioid abuse.

7 So isn't that an example of how -- of necessity raw
8 population numbers affect each one of the other two
9 categories that are identified in Paragraph 12 of your
10 declaration.

11 MR. KAMINETZKY: Objection to form.

12 THE COURT: Let me see if I can ask the question.
13 Just turning to the paragraph that Mr. Cahn referred to,
14 Paragraph 22 --

15 MR. CAHN: Twenty-seven, Your Honor.

16 THE COURT: I'm sorry, 27. Do you agree that
17 there is a -- that the footnote, Footnote 1 in Paragraph 27
18 can be read as an example of how there may be more deaths in
19 a highly-populous state like California, which would be a
20 potential tie-in to the second metric in Paragraph 12, i.e.
21 an adjusted metric reflecting the approximate deaths related
22 to opioids?

23 THE WITNESS: There is a relationship between
24 population and the metric. It is not a perfect or direct
25 relationship, but there is a relationship. And so

1 increasing population or -- well, I guess I could do it this
2 way, Your Honor. If two states had the exact same rate and
3 one of them was -- what we were trying to solve for is if
4 two states have the same opioid overdose death rates and one
5 state had a population ten times smaller than the other,
6 under the approach advanced by some states, they would have
7 been treated the same even though the state that had ten
8 times more, you know, people would have had ten times the
9 number of deaths. So the increase in population does have
10 some relationship, but it's not just driven by population I
11 guess is my point and my quandary with the questions that I
12 was being asked.

13 THE COURT: Okay. Mr. Cahn, you can go on.

14 MR. CAHN: Thank you, Your Honor.

15 BY MR. CAHN:

16 Q Mr. Guard, the formula as you first encountered it in
17 November of 2018, can you identify or recollect the
18 respective weights that were given to each of the form
19 factors that are outlined in that paragraph?

20 A The first one that I encountered the formula, I believe
21 it was even for each of the four categories in November of -
22 - I guess it was November 2018. And then in between
23 November and sometime later, there was a change and it said
24 other metrics were increased.

25 Q So 2018 it was 25 percent for each of the four

1 categories. Is that correct?

2 A That is correct.

3 Q Thank you. In Paragraph 17, you identify the -- your
4 proposal as it was in April of 2019, or roughly five months
5 later if I'm counting correctly. And each of the factors
6 was the same, but were the weights the same at that point?

7 A No. At that point in time, I believe the morphine
8 milligram equivalence units was -- that rate was increased
9 at the expense of the other metrics.

10 Q And do you recall how much it was increased?

11 A I do not. I believe it was around 28 or 31, but I
12 cannot remember clearly which one of those it was.

13 Q And do you know the reason for that change in the
14 weights?

15 A I believe they were internal discussions and a decision
16 was made by the Remedies Committee to weight it differently.

17 Q Do you -- Mr. Guard, do you know why either in November
18 of 2018 or April 2019, do you know why population was added
19 as a standalone factor in addition to the three other
20 categories?

21 A Well, the problem with the three categories are that
22 each of those metrics -- I mean, none of them were intended
23 for allocation. And each of those metrics has issues with
24 it. For example, in some states, you do not have medical
25 doctors that serve as medical examiners. And so you have --

1 in some states you have elected people who get to determine
2 whether causes of death are listed and what cause of death
3 is listed. And so I think in all states it's true that the
4 number of opioid deaths are underreported. But in some
5 states, there is a difference in the level of
6 underreporting. And so it's not -- so that's one example.
7 Morphine milligram equivalents as another example is while
8 the pills may be shipping to one state, during the opioid
9 crisis, we saw people traveling across the country to get
10 pills. So the fact that pills were shipped and prescribed
11 in particular states and dispensed would not necessarily
12 mean that the pills ended up being consumed in that state.
13 And the third metric, the survey for pain reliever use
14 disorder order, is a self-report measure where you are
15 relying on people to say that they have a problem and
16 issue., and so, you have a huge level underreporting, and
17 that level varies by state depending on what kind of
18 substance abuse treatment and the help each state utilizes.
19 So population was added to try to -- in a way, to try to
20 deal with the issues that existed for the other metrics and
21 population was and is a typical metric that is utilized in
22 state attorney general's settlement. It's not used in every
23 settlement, every work settlement, that it is one that is
24 routinely considered and routinely used.

25 Q Well, okay, thank you for that answer. But in

1 Paragraph 19, you note that including population as a metric
2 would not help your state, Florida, to earn a greater share
3 of distributions. Did you ever consider or did your office,
4 or your administration ever consider supporting a formula
5 that either eliminated or deemphasized population?

6 A No, because General Moody's administration was trying
7 to reach consensus with the other states, and we also
8 recognized fairly early on the limitations of the other
9 metrics. And so, given the limitations, given where other
10 states were and given the direction that the Attorney
11 General of the State of Florida, you know, gave me, which
12 was to try to develop consensus in a way so that we could
13 settle all these cases, not just the Purdue matter; that
14 wasn't contemplated or considered.

15 Q In Paragraph 27, which we referred to earlier, we
16 talked about the discrepancy in the per capita death rates
17 between -- you specifically noted the difference between
18 Washington and California. And as we talked about earlier,
19 under your figures, West Virginians were eight times as
20 likely to die from opioid abuse as were Californians.
21 Wouldn't this argument militate in favor of being more
22 solicitous of states such as West Virginia, which has such a
23 high relative death rate?

24 A No.

25 Q And why is that?

1 A Well, you know, the economic effects of the opioid
2 epidemic, our numbers are actually -- I mean, if you have --
3 and if California has more people that are addicted to
4 opioids, to get them treated. Treatment is like a per-
5 person cost. There is a cost that is associated with per
6 person. So while I think -- and I don't want any of my
7 testimony to in any way suggest that the opioid epidemic has
8 not been devastating to West Virginia -- it has. It's been
9 devastating of all the states.

10 But, I mean, you're talking about things like
11 paying for treatment and paying for treatment is going to be
12 a per kind of patient cost and it's going to, frankly, it
13 probably varies by state depending on what kind of
14 healthcare infrastructure there is, but there is a per-unit
15 cost. And so, the same thing with people dying, that the
16 effects is you're losing, you know, tax revenues, you're
17 losing other amounts of money and as a kind of per-
18 individual cost.

19 So while I think that those rates do tell you
20 where you have a concentrated problem and may, you know, in
21 a perfect world, you know, it'd tell you where you need to
22 focus or where there needs to be something done. When
23 you're looking at trying to develop an allocation or you're
24 looking at trying to figure out how money should flow, you
25 know, the fact that their rate is higher doesn't necessarily

1 -- on a per capita basis, doesn't necessarily tell you
2 anything.

3 Again, I go back to my example. If, you know,
4 there's the state of Alabama and the state of Florida had
5 the exact same rates, Florida is, you know, many times
6 bigger than the state of Alabama and there would be more
7 people that would have opioid addiction in Florida than in
8 Alabama.

9 So, you know, I don't think that just because the
10 per capita rate is higher and even considerably higher --
11 again, I don't mean to diminish or demean what is going on
12 in West Virginia in the slightest -- I don't think that
13 really tells you much about how money should flow.

14 Q Just to be clear, Mr. Guard, you've spoken about
15 economies of scales. You are not an economist; is that
16 correct?

17 A I am not.

18 Q Thank you. I understand everything that you said, but
19 is it not a fact that under the current allocation
20 methodology, the state of California will receive fully 10
21 times the amount of distribution that West Virginia will; is
22 that correct?

23 A I think it's a little less than 10 times, but it's more
24 than 9 times, so it's -- I'm not -- I don't want to quibble
25 with you, but I do want to be accurate. They're getting

1 about 10 percent or a little bit over 10 percent, I think
2 it's 10.2, and West Virginia's getting 1.15 percent.

3 Q Actually, I think it's 1.16, but again, let's not
4 quibble. Thank you. And is, in your view -- and again with
5 respect to everything you said by way of explanation, does
6 10 times or 9, the same amount times multiple seem like a
7 fair allocation to you?

8 A Well, I don't know what you mean by fair. I mean, this
9 was a negotiated solution here that we spent two years
10 negotiating over. You know, fair involves some kind of
11 subjective view of things. I think in the end, it is fair
12 in the sense that on multiple occasions, we were able to get
13 states to compromise and improve the situation for states
14 like West Virginia. And we were -- and so, like any
15 negotiation, we ended up at a point where I'm sure if you
16 talked to California, they don't think the allocation is
17 fair. And usually that's -- we have a good agreement or a
18 good kind of consensus position, all the parties, to some
19 degree, feel like it is "not fair" to them.

20 Q In Paragraph 29, you indicate that California refused
21 to contribute to the 1 percent intensity claim that you've
22 established. Do you have a reason for that refusal?

23 A I think, without reviewing because I'm trying to be
24 very careful with the privilege here and I'm not trying to
25 waive California's privilege in the slightest, I think that

1 thought they had given enough in the negotiation, and they
2 were unwilling to give more.

3 Q Okay. Did you have any -- I'm not asking you for the
4 content at this point. Did you have any conversations with
5 any representatives of California about this issue?

6 A I did.

7 Q And can you tell me who those conversations were with?

8 A Melanie -- what's Melanie's --

9 Q Cyganowski?

10 A No, Melanie -- my attorney.

11 Q (indiscernible) or no?

12 A Melanie, I think it's Fontes Rainer. It was the head
13 of the group for California that was dealing with the opioid
14 litigation.

15 Q And are you familiar with the rank in which California
16 stands on the intensity measures that have been developed?

17 A I don't know specifically where they stand. I know
18 generally that they have a lower intensity rate than -- you
19 know, they're definitely in the bottom half. I don't know
20 exactly where they fit on "intensity" measures. And I'm
21 assuming by intensity measures, you mean the workout in the
22 measures.

23 Q It, for the fact -- well, let me (indiscernible).

24 Thank you. You referred in Paragraph 33 to conversations
25 that you have with West Virginia's Attorney General Patrick

1 Morrissey. Did you -- I'm pointing at that West Virginia,
2 and I quote, "wanted a larger allocation." Did you explore
3 what Attorney General Morrissey, the reasons why West
4 Virginia wanted a larger allocation?

5 A He had, at one point in time, did indicate why.

6 Q I'm inviting you, as counsel for West Virginia, to
7 stand on that answer.

8 MAN: Your Honor, just as long as that's perceived
9 as a waiver with respect to common interest for all the
10 other states.

11 THE COURT: Okay. All right, you can go ahead,
12 Mr. Guard.

13 THE WITNESS: Well, I think that my understanding
14 was that General Morrissey was under clinical pressure from
15 members of the PEC, based on his prior settlements with the
16 distributors, and, you know -- and also because of the
17 intensity that West Virginia had experienced. So I think he
18 was, you know, trying to do right by the folks that he
19 served and wanted to get more of an allocation and there was
20 a political reality also existing.

21 BY MR. CAHN:

22 Q But I take from your answer that it wasn't just because
23 West Virginia wanted more money to build a statute or
24 somebody or whatever.

25 A No, I don't think any Attorney General was intending to

1 build a statute of anybody. I think every -- my take from
2 all of the dozens upon dozens of sessions and phone calls
3 and negotiations that I took part in, is that all the
4 Attorneys General are committed to trying to fix the
5 situation we find ourselves in with the opioid epidemic.

6 Q In Paragraphs 36 spilling over into 37, you note that
7 West Virginia proposed a plan, including a ranking of the
8 consenting states in October 2019. Have you familiarized
9 yourself with -- did you familiarize yourself with that
10 plan?

11 A Not particularly. I got it I think the evening before
12 at, like, 11:00 I believe, sometime late in the evening the
13 night before we were having that meeting. I did look over
14 it. I did at the time put it on -- I think especially the
15 next morning, but I haven't reviewed it since.

16 Q I'm sorry. I missed the last part of your answer.

17 A I have not reviewed it in depth since. You know, other
18 than I do believe that I did look at it to fill in the
19 information that is Paragraph 37.

20 Q Did you speak to anybody from West Virginia or a
21 representative of West Virginia about the plan either at
22 that time or subsequently?

23 A Well, I spent the entire day with General Morrissey, so
24 I definitely spent time with General Morrissey. I believe
25 your expert was present or someone from your -- that General

1 Morrissey had brought to that meeting. And so, those are
2 the only two folks from West Virginia that I would have
3 spoken to. I think they were the only two folks at that
4 meeting.

5 Q By our expert, are you referring to Dr. Charles Cowan?

6 A Yes. I believe that was the gentleman that was there,
7 though, I just -- I remember him saying he was a doctor, and
8 I don't -- and I want to say that his last name was Cowan,
9 but I -- you know, again, it was a very limited interaction
10 with him. I spent -- I had many more conversations or much
11 more conversations with General Morrissey himself.

12 Q Recognizing that you haven't familiarized yourself with
13 that plan, are you -- are we generally in agreement that if
14 severely deemphasized population and focuses attention were
15 on intensity measures; is that fair to say?

16 A What I remember from it being struck is how much West
17 Virginia benefited at the expense of basically half the
18 country.

19 Q Well, are you familiar with the distributions made
20 under the SAMHSA program?

21 A Not specifically, but generally, yes, I'm familiar with
22 the different distributions that occur under -- that has
23 evolved under SAMHSA, but it is not uniform.

24 Q And for the record, let me just clarify we're talking
25 about the Substance Abuse and Mental Health Services

1 Administration?

2 A That's correct.

3 Q Okay. And are you aware that West Virginia
4 consistently receives at least 3 percent of the funds
5 distributed under that program; are you aware of that?

6 A I think I'm aware of at least one year where it did
7 after, I believe, there was intervention by the senators
8 from the state of West Virginia.

9 Q Well, I'm not going to ask him about -- that's not in
10 evidence. You say that in Paragraph 38, and I quote, "West
11 Virginia's proposal...", and I'm talking about at the
12 Atlanta meeting. I think it's at the Atlanta meeting,
13 forgive me. Yes, the Atlanta meeting of consenting states
14 in October 2019. West Virginia made a proposal which -- and
15 again, I'm quoting -- "Did not garner significant support
16 amongst the consenting states."

17 Can you tell us how many states and your state
18 spoke either for or against West Virginia's proposal?

19 A I don't believe any states spoke in favor of West
20 Virginia's proposal. My memory is that Alabama and New
21 Mexico also spoke against, I guess the Denver plan
22 generally, but no one that I can recall spoke in favor of
23 the West Virginia proposal.

24 Q And in Paragraph 42, you report the adoption of New
25 York proposing they allocate 15 percent of the total

1 distributions to the states using the PEC metrics. Isn't it
2 a fact that the PEC metrics do not include population as a
3 standalone metric?

4 A They do not.

5 Q The final adoption of a debated plan, which now
6 comprises 85 percent of the allocations to the states, do
7 you recall what the weight given to population is in that
8 proposal?

9 A I believe it's 31 percent.

10 Q Which is more than any other factor; is that correct?

11 A I believe so, yes, but it's far less than what other
12 states wanted it to be.

13 Q I understand.

14 MR. CAHN: Thank you, Mr. Garner. No further
15 questions.

16 THE COURT: Okay. Does anyone else want to
17 question Mr. Guard?

18 MR. ROBINSON O'NEILL: Your Honor, Tad Robinson
19 O'Neill on behalf of the State of Washington.

20 THE COURT: Okay.

21 BY MR. O'NEILL:

22 Q Good morning, Mr. Guard.

23 A Good morning.

24 Q As the colloquy at the beginning of the last
25 examination indicated, there are common interest issues

1 here. And to the extent my questions get anywhere near
2 that, I hope that you will help me (sound glitch) it and I'm
3 sure Mr. Wagner and Mr. Troop will jump in. In your
4 declaration at Paragraph 47, if you could turn to that.

5 A Yes.

6 Q In this section -- it's not just Paragraph 47, but the
7 following ones as well -- you discuss the efforts by the
8 states, the local governments, and actually the private
9 trusts as well focusing on abatement as the priority for the
10 NOAT Trust; is that correct?

11 A I'd almost -- well, it turned out to be the NOAT Trust.
12 At the time, I don't think we even had an idea about NOAT
13 from the start. Obviously, the abatement strategies that
14 are listed here apply and I think across every settlement,
15 so I don't think it was specific as to Purdue or NOAT. But
16 I guess the answer to your question is maybe
17 (indiscernible).

18 Q That's actually a fair point. My next question was the
19 discussion you had here about abatement strategy. The place
20 in the plan where it's implemented is through the NOAT
21 document, which is Exhibit JX-1620; is that correct?

22 A Yeah. I think that exhibit -- I don't have the exhibit
23 number on it, but it's Docket No. 3232, and I think from the
24 email that I got from your office, that would be right.

25 Q And it's my suspicion, Mr. Guard, that you are familiar

1 enough with that document that you can probably cite to it
2 without even having to look at it. Is it true that in the
3 NOAT agreement, it requires the local governments and states
4 that receive funds from it to expend those funds on approved
5 uses that you describe in your declaration?

6 A Yes, except for 5 percent.

7 Q Yeah. In fact, it's virtually all, it's 95 percent of
8 it; is that correct?

9 A That is correct.

10 Q And you referenced just a minute ago that this set of
11 abatement strategies has been applied in other settlements
12 as well within the opioid industry; is that correct?

13 A Yes. It is featured in both the distributor settlement
14 and the Janssen settlement.

15 Q And I believe it's also part of the Mallinckrodt
16 bankruptcy; is that correct?

17 A Assuming that that plan gets confirmed, yes, it's part
18 -- I believe it's part of the plan.

19 Q All right. Now in the case of the states, there are 48
20 states that were involved in the bankruptcy. There were two
21 states that had settled separately; is that correct?

22 A In Purdue, yes.

23 Q There are also several thousand local governments that
24 were involved in the negotiations over the abatement
25 strategy; is that correct?

1 A The PEC was actively involved. I don't know what they
2 did with the document, but I assume they sent it out to
3 their clients.

4 Q The federal government's also been consulted and has
5 had an opportunity to approve these list of abatement
6 services?

7 A Yes. We received an email from an assistant United
8 States attorney that we were negotiating with after we had
9 multiple calls with the Department of Health and Human
10 Services and the Department of Justice about these issues.

11 Q Do you know if any of the -- any of the states, whether
12 objecting or supporting of this plan, have objected on the
13 basis of these abatement strategies?

14 A I'm unaware of it.

15 Q Would you agree with me that these abatement strategies
16 are fully consensual as to all of the states and the local
17 governments, at least to the extent they've entered into
18 this agreement, as well as the federal government?

19 A I guess I want to -- and so I understand your question.
20 My understanding is that the lawyers representing all those
21 parties agreed to these being the abatement strategies. If
22 that answers your question, then yes. You know, again, I
23 don't know if the 3,000 individual local governments all
24 voted yes, and I don't -- you know, I assume that -- I don't
25 know how the United States voted as far as this plan.

1 But, I mean, they sent us an email indicating they
2 were accepting of these being the abatement approved uses of
3 the money.

4 Q And Mr. Guard, you spent, as you indicate in your
5 declaration, thousands of hours working on this plan; is
6 that correct?

7 A Hundreds if not thousands, yes. I mean, we're part of
8 the group that was doing the day-to-day, week-to-week,
9 involved in all the mediations.

10 Q If -- you may know this, but if you need to refer to
11 the document, I can direct you to it. But the plan or the
12 NOAT Trust also requires that each state that participates
13 in it set up what's called a government participation
14 mechanism; is that correct?

15 A It does if they do the default mechanism. If they
16 enter into a statewide agreement with their subdivisions,
17 there may be ways not to do it if their subdivisions agree
18 to it.

19 Q The other alternative is to set up what you call the
20 statewide agreement, that is an agreement between the state
21 and its local governments on how to administer these funds.

22 A That's correct.

23 Q That is a significant part of this plan and represents
24 an extraordinary cooperation between local governments and
25 states on this abatement plan; is that correct?

1 A It is, at least from my background and knowledge, I've
2 never seen a united or collaborative effort what is proposed
3 in this plan to be tried -- to be attempted to be
4 accomplished.

5 Q Can you think of any other plan where you have the
6 support of 48 states, the federal government, and several
7 local governments in favor of a public health benefit like
8 this?

9 A I cannot, no. Cases like this do not exist on a
10 regular basis.

11 Q And as you've indicated, this has spread beyond just
12 the Purdue matter, but to other opioid settlements that are
13 going on nationally now.

14 A That is correct.

15 Q As part of the government protecting -- government
16 participation mechanism and/or the statewide agreement, the
17 states and local governments agree to submit to the
18 jurisdiction either of this Court, if the Court retains
19 confirmation post-confirmation, or to a state court; is that
20 correct?

21 A That is correct.

22 Q In addition, in the last section of the NOAT, there is
23 a, I would say, a robust accountability requirement that the
24 states have voluntarily submitted to which requires us to
25 report publicly how the money is being spent; is that

1 correct?

2 A That is correct.

3 Q And also submits the states and the local governments
4 to the jurisdiction either of this Court, if it has
5 jurisdiction post-confirmation, or to the Delaware -- I
6 mean, I think it's Delaware where the companies or the state
7 or otherwise incorporated or to a state court with
8 jurisdiction; is that correct?

9 A That is also correct.

10 Q All of these provisions that are in the NOAT are more
11 consistent with injunctive relief than they are with a
12 monetary settlement; would you agree with me?

13 A I don't know about that. I think, you know, money can
14 be conditioned on use. And, you know, given how the money
15 is being split up here and we're not cutting it up into
16 tiny, tiny amounts, which is what would happen if we each
17 had our claims, you know, I don't -- you know, we do
18 settlements all the time that condition use of money on
19 specific purposes, and I don't ever think that is
20 injunctive.

21 I mean, the tobacco settlement itself, at least
22 the Florida version of it, had limitations on it. I know
23 the MSA may have not. And I'm thinking through some of the
24 other settlements -- National Mortgage settlement, BP
25 settlement -- they're all conditioned the money on

1 particular uses. So I don't think I agree with your -- that
2 it's injunctive relief.

3 Q Right, and that's a fair point and a good distinction.
4 But in this case, the parties are asking this Court to enter
5 those terms and subject states and local governments to
6 court oversight on the terms. That does make it different
7 than the voluntary settlements, and there is a court order
8 that is being contemplated (sound drops).

9 A Well, I mean, it's a bankruptcy case, so there are -- I
10 mean, in other cases, their work in National -- I mean,
11 National Mortgage settlement, I believe there was a Federal
12 District Court consent order. So, you know, I don't -- I
13 guess it's what I'm struggling with is there are -- in each
14 one of those kinds of cases, there is some kind of court
15 mechanism that reflects limitations, so I guess that's what
16 I'm struggling with.

17 Q All right. We'll move on then. It is true that this
18 settlement could not have come together without the
19 abatement lists that you have described here.

20 A I think that it would have been very difficult to get
21 the high level of voting at the levels that are -- of yes
22 votes that have happened in this case without having some
23 lists of what the money is going for. Because I -- you
24 know, rightfully or wrongfully, you know, there was, at
25 least in one point in time, a lack of trust between states

1 and their localities on how settlement monies were being
2 spent.

3 And so, what the list has done is kind of, it
4 prevented those suspicions and those concerns, so it's
5 allayed them in a way that allows the settlement to happen.

6 Q All right, Mr. Guard. I will conclude by just
7 remarking that it is incredible the efforts that you and
8 Jennie Peacock in Tennessee, Steve Mange in North Carolina,
9 and Gillian Feiner of Massachusetts have done to negotiate
10 this public abatement deal. Thank you.

11 A I appreciate it.

12 THE COURT: All right. Does anyone else wish to
13 cross-examine Mr. Guard?

14 MR. HUEBNER: Your Honor, it's Marshall Huebner.
15 I have two questions for Mr. Guard.

16 THE COURT: Okay.

17 MR. HUEBNER: Good morning, Mr. Guard. For the
18 record, I'm Marshall Huebner of Davis, Polk & Wardwell, on
19 behalf of the Debtors. Can you hear and see me clearly?

20 THE WITNESS: I can.

21 MR. HUEBNER: Thank you.

22 BY MR. HUEBNER:

23 Q Mr. Guard, I'd like to pose a hypothetical to you.
24 This will take about 60 seconds, then we're done. Imagine
25 the case where every private creditor group and 49 of the 50

1 states all supported a resolution and one state did not
2 because it had a different vision. In your view as a senior
3 state official, would it be justice if one state were
4 allowed to block the will of 49 states and all the other
5 stakeholder groups in a situation?

6 A No.

7 MR. FOGELMAN: Your Honor, I don't see the
8 relevance.

9 MR. O'NEIL: Yeah. I object and move to strike
10 the answer, Your Honor.

11 THE COURT: I'm sorry. I just want to make --
12 who's objecting? Was that Mr. O'Neill?

13 MR. FOGELMAN: This is Larry Fogelman on behalf of
14 the United States objecting, Your Honor.

15 THE COURT: Oh, Mr. Fogelman, okay. All right.

16 MR. O'NEILL: I am also objecting, Your Honor.

17 MR. HUEBNER: Your Honor, I'm happy to address
18 those. I note that yesterday, both of these lawyers sat
19 there as our witnesses were asked about their conception of
20 justice. They were also asked what governmental officials
21 should have their views as their vision of justice. And
22 neither Mr. O'Neill or Mr. Fogelman argued in any way that a
23 private witness does not have to answer the question putting
24 himself in the minds of a senior attorney general official.

25 Here, we have such an official and suddenly

1 they're objecting? This is rather --

2 THE COURT: Well, let me -- I'm not sure what the
3 objection is and that's partly because people are talking
4 over each other, so let me hear from the two objectors.
5 What's the basis for the objection?

6 MR. FOGELMAN: Your Honor, this is Larry Fogelman
7 from the United States Attorney's Office. Mr. Guard's
8 opinion about whether a hypothetical of 49 out of 50 states,
9 whether that constitutes justice in Mr. Huebner's whatever
10 example he's giving, is simply irrelevant and calls for
11 speculation. There's no foundation, and he should not be
12 allowed the answer the question.

13 THE COURT: Okay. Let me hear from the other
14 objectors too.

15 MR. O'NEILL: Your Honor, my objection is also
16 that it's a hypothetical and also, frankly, goes to the
17 ultimate issue that's before this Court since the Court has
18 to make this determination in the real situation of this
19 case with 20 percent of the states objecting.

20 THE COURT: I guess -- I'm not sure if it is a
21 hypothetical in the sense that the State of West Virginia
22 has its own unique objection.

23 MR. O'NEILL: Fair enough.

24 MR. EDMUNDS: Your Honor, if now would be a good
25 time for me to -- I've been trying to get in, but there's

1 been cross-talk.

2 THE COURT: Yes, go ahead. Go ahead, Mr. Edmunds.

3 MR. EDMUNDS: Brian Edmunds for the State of
4 Maryland. I join the objection as stated by Mr. Robinson-
5 O'Neill and Mr. Fogelman and would add additionally that, to
6 Mr. Huebner's point, that Mr. Guard may be authorized to
7 speak for the State of Florida, but his -- he is not
8 authorized to speak for the State of Maryland.

9 MR. HUEBNER: So, Your Honor, may I address the
10 objection?

11 THE COURT: Can I just -- let me -- I'm going to
12 try to cut this short. In the questioning yesterday and
13 even Mr. O'Neill's or someone's question -- no, actually, it
14 was Mr. Cahn's questioning today, witnesses were asked,
15 including Mr. Guard today by Mr. Cahn, is something fair or
16 is something just. Those are very broad concepts, as Mr.
17 Guard answered. Fairness is often in the eye of the
18 beholder and can be thrown around as part of argument.

19 But ultimately, I have to decide under the
20 standards that congress and the courts have set out for me
21 to decide. It is, I think, clear that someone whose child
22 has died has every right to think that that's not fair and
23 perhaps even that it's not just. It's a lot to ask people
24 who are not lawyers to appreciate that those determinations
25 are not really what is before the Court, except as they are

1 incorporated into the legal standards that I need to follow.

2 So I think, frankly, those questions are a
3 distraction, although they're certainly moral questions with
4 great weight, but they're a distraction in this case unless
5 they're tied to a particular standard that I need to rule
6 on.

7 I let the question be asked yesterday. But I
8 think people should be quite careful as the same folks who
9 were asking it yesterday, I recognize today, in straying
10 from what is really at issue before the Court, which is the
11 legal standard I need to apply.

12 So I will overrule -- I'm sorry. I will not
13 permit the question to be asked, unless it's tied to the
14 standard that I need to apply.

15 MR. HUEBNER: Your Honor, I think, as was true
16 yesterday when the objectors asked this exact question, this
17 is really for oral argument, and I will reserve my views on
18 many of these topics for then.

19 THE COURT: Okay. All right. So you didn't have
20 any other questions, Mr. Huebner?

21 MR. HUEBNER: I don't, Your Honor. Thank you very
22 much.

23 THE COURT: Okay.

24 MR. HUEBNER: And thank you, Mr. Guard.

25 THE COURT: All right. Does anyone else have any

1 questions for Mr. Guard?

2 I have a couple of questions for you, sir, and
3 maybe I just couldn't hear you clearly enough on this. Your
4 testimony was quite clear that the quite complex and,
5 obviously at this point, very widely accepted opioid
6 abatement strategies that would be under this plan are
7 actually being proposed and even implemented in other
8 contexts involving opioid litigation, and you've named a
9 couple of cases of settlements and a pending bankruptcy case
10 where that's proposed.

11 I want to take you back to the allocations among
12 states that was the subject of the first cross-examination
13 of you today. And I think I heard you state that these were
14 developed with no particular case in mind, although I think
15 I also took away from your declaration that the Purdue case
16 certainly led the attorneys' general to focus their
17 attention even more than it had been focused on, on coming
18 up with what they believe was an allocation mechanism that
19 they could agree to.

20 Has this mechanism of allocating just the money
21 among the states been implemented in other contexts yet?

22 THE WITNESS: Yes, Your Honor. It's been
23 implemented in the McKinsey settlement that occurred earlier
24 this year or, I guess it was earlier this year or the year
25 previous. And then also while the numbers slightly changed

1 because in each instance, there are different states that
2 have settled with a particular defendant.

3 And so, while the numbers for Florida have not
4 changed, numbers for the states like West Virginia and some
5 of the other smaller states changed by settlement because
6 they are the beneficiaries of the kind of the shifting of
7 monies for each one of these sums.

8 THE COURT: Because not necessarily every state's
9 a party to it?

10 THE WITNESS: That is correct.

11 THE COURT: Okay.

12 THE WITNESS: Or in -- they're like in -- for
13 example, in this case, Oklahoma settled before the
14 bankruptcy.

15 THE COURT: Right.

16 THE WITNESS: And the distributor case, West
17 Virginia settled with all three distributors prior to our
18 settlement being announced.

19 THE COURT: Okay, thank you.

20 THE WITNESS: And West Virginia and Oklahoma are
21 about equal as far as the allocations they had.

22 THE COURT: Okay. My other question is related to
23 the portion of your declaration that deals with the part of
24 the phase one mediation that addressed how to split monies
25 between private and public creditors, and you talk about

1 that at Paragraph 66, 67, et cetera.

2 In the declaration and your testimony today, it
3 comes through that there was heavy negotiation among the
4 states as states and then among the states on the one side
5 and other governmental entities on the other. How would you
6 characterize the negotiation among the states and
7 governmental entities on the one hand and the private
8 creditors on the other?

9 THE WITNESS: Probably actually more intense than
10 the first two, which was surprising. I thought it would be
11 -- when you deal with -- usually deal with parties that are
12 more like commercial creditors, you would think it'd be
13 easier, but it was not.

14 THE COURT: And those private creditors, who were
15 they represented by?

16 THE WITNESS: They each had a group of counsel,
17 which was a subset of, I guess, the nationwide counsel that
18 represented each group or set of individuals. So they had a
19 negotiating committee like we had a negotiating committee.

20 THE COURT: Okay. And they included -- those
21 creditors or claimants included individuals who were injured
22 by opioids?

23 THE WITNESS: At some of the meetings, some of the
24 PI or personal injury family members were present and made
25 presentations to us. They were not necessarily in some of

1 the negotiations, so it was just their lawyers, but their
2 lawyers did bring them to and have them make very impactful
3 presentations to the negotiating parties and the committee.

4 THE COURT: So it was both the lawyers and, in
5 some cases, their individual clients.

6 THE WITNESS: Yes.

7 THE COURT: Okay. All right. Does anyone have
8 any questions on that?

9 MR. FOGELMAN: Your Honor, I just have a couple of
10 questions on redirect, clarify a couple of points. May I
11 proceed?

12 THE COURT: Sure.

13 REDIRECT EXAMINATION OF JOHN GUARD

14 BY MR. FOGELMAN:

15 Q Mr. Guard, first of all, thank you for your patience.
16 Just so that it's clear, I'm right that the population 31
17 percent, that's 31 percent of the 85 percent under the plan,
18 correct?

19 A That is correct.

20 Q And the other 15 percent, is population a factor at
21 all?

22 A No, it is not.

23 Q You alluded to this during your -- during the cross.
24 But is Florida advantaged or disadvantaged by the inclusion
25 of population as a factor?

1 A It is disadvantaged. It's the only factor that
2 actually disadvantages Florida.

3 Q And can you explain why it's disadvantaged?

4 A So all the other metrics are higher than 7 percent and
5 Florida's population, depending on which year is utilized,
6 is 6.3 to 6.4 percent. I haven't looked to see what it is
7 under the latest census, but it's lower. And so, while all
8 the other factors were higher, population, in effect,
9 dragged Florida's number down and there's no (sound drops).

10 Q I'm sorry. Can you tell us why nevertheless Florida is
11 advocating for this plan?

12 A Well, you have to come to some kind of agreement and
13 consensus in order for this plan to occur. And like again,
14 I've been a lawyer for 20 years. I've never had a
15 settlement where I was 100 percent happy and 100 percent
16 satisfied with where things ended up. And so, to develop
17 that consensus meant that my -- the attorney general's views
18 and, to the extent they were relevant, my views had to give
19 way, you know, so that we could have an agreement or so that
20 we could have an agreement where there's as many states as
21 have agreed to this allocation.

22 Q And just one last question. What resources did your
23 office have available in developing the factors that
24 ultimately went into the plan?

25 A There is a lot of different data out there from a lot

1 of different data sources. But the data sources that I
2 tended to focus on were from the Centers for Disease Control
3 and from SAMHSA and from the National Institute of Health,
4 so that is the data that we were focused on and looking at
5 in looking for alternative potential measures.

6 MR. FOGELMAN: Thank you. Nothing further.

7 THE COURT: Okay. Any further questions?

8 MR. ROBINSON O'NEILL: Your Honor, I have one
9 follow up on cross-examination question.

10 THE COURT: Okay. Go ahead, Mr. O'Neill.

11 RECROSS-EXAMINATION OF JOHN GUARD

12 BY MR. ROBINSON-ONEILL:

13 Q Mr. Guard, I neglected to ask this earlier, but you
14 mentioned it and the Judge in his question mentioned as
15 well. Are you aware of any other bankruptcy proceeding in
16 which private, you know, groups of private creditors like
17 hospitals or insurance companies or the NAS babies I think
18 is the other one, agree voluntarily to restrict their money
19 to abatements related to spending?

20 A I'm not aware of any other case like that.

21 MR. ROBINSON-ONEILL: Thank you.

22 MR. CAHN: Your Honor, may I recross briefly?

23 THE COURT: Yes, just on the redirect though
24 and/or my question.

25 MR. CAHN: I'm sorry, Your Honor, I didn't hear

1 what you said.

2 THE COURT: You can recross, but just on the
3 questions that were answered after your cross-examination.

4 MR. CAHN: Yes, of course, Your Honor.

5 THE COURT: Okay.

6 MR. CAHN: And I also do -- I do have one question
7 with respect to an answer that he gave in response to your
8 question.

9 THE COURT: No, that's included. Go ahead.

10 BY MR. CAHN:

11 Q Mr. Guard, where is it written that this point had to
12 be developed by the states in devising your own settlement?
13 I realize that before the bankruptcy case, there was one
14 dynamic. And in the bankruptcy case, wouldn't the plan
15 proponent generally develop its settling parameters for its
16 plan?

17 MAN: Objection to form.

18 THE COURT: You have to ask a question, Mr. Cahn.

19 MR. CAHN: I thought I did, Your Honor.

20 THE COURT: Well, is the question why did the
21 states themselves develop the allocation among the states,
22 as opposed to the Debtor?

23 MR. CAHN: Yes, Your Honor.

24 THE COURT: Okay. You can answer that, Mr. Guard.

25 THE WITNESS: Well, one, I think because we

1 already had allocation that had been agreed to by the vast
2 majority of states, you know. I can't answer for the
3 Debtor, but I mean, I think that they were aware that we
4 already had an allocation. And, you know, I guess why
5 create a new -- why design a new wheel if the wheel already
6 exists.

7 And two, I think it's common in bankruptcy for,
8 you know, plan proponents or people that have come into the
9 bankruptcy as plan supporters to engage with the Debtor on
10 issues that are important to them.

11 BY MR. CAHN:

12 Q All right. So what you're saying, if I understand you
13 correctly. I just want to clarify your answer. What you're
14 saying is that the states already had a plan in place before
15 the bankruptcy. And did the Debtor agree that it was
16 appropriate for the states to continue to devise this plan,
17 rather than the Debtor taking part?

18 A Was there a specific written agreement to that fact?
19 No. At some point in time, we talked with the Debtor and
20 addressed the allocation and gave them information on how it
21 was achieved and how it came about and things like that, and
22 it when was utilized. So if that -- if action can be an
23 agreement, then I guess that is an agreement.

24 Q Yes. All right. I also -- I have one question for you
25 in response to -- you answered in response to a question

1 that Judge Drain asked you and you discussed the McKinsey
2 settlement. And I thought -- correct me if I'm wrong, I
3 wasn't sure if I heard your answer. Did you say that West
4 Virginia was part of the McKinsey settlement?

5 A I didn't mention West Virginia at all. I didn't
6 mention any state in response to that question.

7 Q Okay. So your answer was with respect to the
8 distribute of the settlement.

9 A No. My answer was the McKinsey settlement used the
10 metrics from this allocation.

11 Q Okay. Are you aware of whether West Virginia was part
12 of the McKinsey settlement?

13 A I don't believe it or Nevada were part of the McKinsey
14 settlement.

15 MR. CAHN: Thank you, Mr. Guard. No further
16 questions.

17 THE COURT: Okay. Your Honor, with apologies, I
18 have two questions based on the recross.

19 THE COURT: Okay.

20 REDIRECTION EXAMINATION OF JOHN GUARD

21 BY MR. HUEBNER:

22 Q Mr. Guard, did the Debtors at any time intend to impose
23 their vision or view of how the states should allocate among
24 themselves (sound glitch)?

25 A No.

1 Q What do you think the reaction of the 48 states
2 participating in the case would have been if the Debtors had
3 attempted to say this is our view of what each of you will
4 be getting and we have designed an intra-state allocation?

5 MR. FOGELMAN: Objection, Your Honor. It calls
6 for speculation.

7 MR. ROBINSON-O'NEILL: I join the objection.

8 THE COURT: I actually don't think it does, given
9 that Mr. Guard is a lead negotiator, along with a number of
10 other attorney generals or their representatives. He can
11 certainly say his view if that were the case.

12 MR. HUEBNER: That's all I'm asking for, Your
13 Honor, just his view had the Debtors attempted, which he
14 already testified that he did not, to impose Purdue Pharma
15 L.P.'s view of intra-state allocation.

16 THE WITNESS: So I think that would have not gone
17 very well. I am sure that would have caused a negative
18 reaction probably from -- well, I can only speak for -- I
19 can speak for Florida and the states that I am close with.
20 It would have sparked a negative reaction and probably
21 (sound glitch) the plan.

22 MR. HUEBNER: I have no further questions, Your
23 Honor. Thank you.

24 MR. EDMUNDS: Your Honor, if I may. Brian Edmunds
25 for Maryland. I'd just like to point out, I think there are

1 a lot of attorneys who have submitted testimony in this case
2 who represent parties in the case, and I think maybe that
3 can work for some facts that aren't at issue. But I think
4 to the extent attorneys are submitting testimony that offers
5 opinions or works to be broader than the scope of what --
6 you know, I think maybe -- maybe the attorney testimony is
7 exceeding, you know, what it should.

8 THE COURT: I don't think it is here. Mr. Guard
9 was speaking for himself. And, frankly, there are times
10 when attorneys evaluate matters in negotiations where it's
11 perfectly appropriate to hear their view. It helps inform
12 the Court's view, so it depends.

13 But as to this question and this answer, to the
14 extent there is an objection to it, I would overrule it.

15 MR. EDMUNDS. Thank you, Your Honor.

16 THE COURT: Okay. All right. Hearing no one
17 else, Mr. Guard, you can sign off. Thank you.

18 MR. GUARD: Thank you, Your Honor.

19 MR. BLABEY: Your Honor, the next witness, Jessica
20 Horewitz, will be presented by Jenna Hudson of the Gilbert
21 Firm.

22 THE COURT: Okay, very well.

23 MS. HUDSON: Good afternoon, Your Honor. Can you
24 see and hear us well?

25 THE COURT: Yes, I can.

1 MS. HUDSON: I'm in a conference room together
2 with Ms. Horewitz. I believe you should be able to see both
3 of us.

4 THE COURT: No, I can see you both. Thanks. Miss
5 Horewitz, would you raise your right hand, please. Do you
6 swear or affirm to tell the truth, the whole truth, and
7 nothing but the truth, so help you God?

8 MS. HOREWITZ: I do.

9 THE COURT: Okay. You can take your hand down.
10 And it's J-E-S-S-I-C-A.

11 MS. HOREWITZ: Yes.

12 THE COURT: Next word, H-O-R-E-W-I-T-Z?

13 MS. HOREWITZ: Correct.

14 THE COURT: Okay. And Miss Horewitz, you
15 submitted a declaration dated August 5th, 2021, in this
16 matter. It attaches as an exhibit a Purdue Pharma liability
17 analysis dated June 24, 2021. Under my order establishing
18 procedures for this hearing, those two documents are meant
19 to be your direct testimony.

20 Knowing that, let me ask you sitting here today on
21 August 13th, and except -- recognizing the update in your
22 declaration to your exhibit, is there anything else that you
23 would like to change in either the exhibit or the
24 declaration?

25 MS. HOREWITZ: No.

1 THE COURT: Okay. All right. Does anyone object
2 to the admission of Ms. Horewitz's declaration and the
3 attached exhibit? All right. I will admit them and treat
4 Miss Horewitz as an expert with regard to the matters
5 covered by her report as updated by her declaration
6 regarding the liability assessment and percentage recovery
7 opinions that she gives.

8 Does anyone want to cross-examine Miss Horewitz?

9 MS. GOSTIN: Yes, Your Honor. This is Isley
10 Gostin of Wilmer Hale on behalf of Specialty -- Navigators
11 Specialty Insurance Company. I have some very brief cross
12 for Miss Horewitz.

13 THE COURT: Okay.

14 CROSS-EXAMINATION OF JESSICA HOREWITZ

15 BY MS. GOSTIN:

16 Q Miss Horewitz, if you have your declaration in front of
17 you, could you please --

18 A I do.

19 Q Great, thanks. If you could please turn to Paragraph
20 11 of your declaration.

21 A I have it.

22 Q And if you see Paragraph 11 of your declaration quotes
23 a sentence from Section 5.2 of the plan; is that correct?

24 A That's correct.

25 Q And then Paragraph 12 of your declaration states, "The

1 ad hoc committee retained me to determine whether the
2 position set forth in Section 5.2 of the plan is accurate."
3 Do you see that?

4 A I do.

5 Q And when you say the position set forth in Section 5.2,
6 am I right that you were referring to the position that is
7 set forth in the sentence quoted above in Paragraph 11?

8 A Yes.

9 Q Okay. So in other words, you're not offering an
10 opinion regarding any other portions of Section 5.2 of the
11 plan; is that right?

12 A That's correct.

13 Q And then turning to Paragraph 13 of your declaration,
14 it says, "To test the accuracy of Section 5.2 of the plan, I
15 analyzed the magnitude of the Debtors' liabilities arising
16 out of or in connection with opioid claims, i.e., minimum
17 opioid claim liability, as compared to the value of the
18 assets." Is that right?

19 A Yes.

20 Q And when you refer in that sentence to the Debtors
21 liabilities arising out of or in connection with opioid
22 claims, am I right that you're referring to that in the
23 aggregate for all of the Debtors?

24 A For all of the Debtors?

25 Q Yeah. So when you wrote -- my question -- apologies,

1 let me clarify. When you referred to the Debtors'
2 liabilities in that sentence, are you referring to the
3 aggregate liabilities for all of the Debtors in the
4 aggregate?

5 A My understanding is that there's one Debtor, but it's
6 all of the liabilities associated with the Debtor.

7 THE COURT: So I think the answer is in the
8 aggregate. There are multiple Debtors and they're not being
9 subsequently consolidated, but you looked at all of the
10 claims filed --

11 THE WITNESS: Correct.

12 THE COURT: -- against all of the Debtors' assets.

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 MS. GOSTIN: Thank you, Your Honor.

16 BY MS. GOSTIN:

17 Q And so to clarify, you're not offering an opinion as to
18 liabilities with respect to any singular particular debtor;
19 is that right?

20 A That's correct.

21 Q Okay. If you could -- if you have handy JX-0534, which
22 is the disclosure statement for the fifth amended plan.

23 A I don't have that in front of me just yet.

24 MS. HUDSON: Your Honor, it would be helpful to
25 know for what purpose the document is referenced. We may

1 have (sound glitch) in another document.

2 THE COURT: Do you have a particular section --

3 MS. GOSTIN: I'm not sure I heard Miss Hudson's
4 question.

5 THE COURT: Do you have a particular section of
6 the disclosure statement you want to reference or refer the
7 witness to?

8 MS. GOSTIN: Yes. It's Page 51 of the disclosure
9 statement.

10 THE COURT: Okay. And --

11 MS. GOSTIN: And the JX number is JX-0534-60 --

12 THE COURT: Okay.

13 MS. GOSTIN: -- if you're looking at a labeled
14 version.

15 THE COURT: And that's a section that discusses
16 Rhodes Technologies and Rhodes entities?

17 MS. GOSTIN: Correct.

18 THE COURT: Okay. So I have to assume your
19 question is about Rhodes Technologies or some other Rhodes
20 entity?

21 MS. GOSTIN: Correct.

22 THE COURT: Okay. Does that help you?

23 MS. HUDSON: It does, but it does not, Your Honor.
24 I would, therefore, need to object to relevance. I don't
25 believe this is something that Miss Horewitz has previously

1 reviewed.

2 MS. GOSTIN: Your Honor, I believe Miss Horewitz
3 listed it in her expert report as one of the documents that
4 she reviewed in preparing her report.

5 THE COURT: Okay. But she's testified she looked
6 at all the Debtors' liabilities together in the aggregate,
7 so I'm not sure whether focusing on one really matters.

8 MS. GOSTIN: Okay. I'm happy to move on.

9 THE COURT: Okay.

10 MS. GOSTIN: I guess with that, Your Honor, I
11 think I have no other questions.

12 THE COURT: Okay. Does anyone else want to
13 question Miss Horewitz? No, all right. Miss Horewitz, I've
14 reviewed your report and your declaration, and I don't have
15 any questions. Well, wait, someone apparently does have a
16 question.

17 MR. UNDERWOOD: I apologize, Your Honor. It took
18 me a moment to turn my screen on.

19 THE COURT: Okay.

20 MR. UNDERWOOD: I have really just perhaps two
21 questions for Miss Horewitz. I apologize.

22 THE COURT: And can you just -- again, it's Mr.
23 Underwood, correct?

24 MR. UNDERWOOD: Correct. Allen Underwood of the
25 firm of Lite DePalma on behalf of Canadian First Nations.

1 CROSS-EXAMINATION OF JESSICA HOREWITZ

2 BY MR. UNDERWOOD:

3 Q Miss Horewitz, in terms of your calculation of the
4 total amount of claims outstanding with your report
5 submitted to this Court, did that calculation include the
6 (sound glitch) filed or made against the U.S. Debtor by
7 Canadian First Nations?

8 A I've not made a specific calculation about any
9 particular claim.

10 Q Okay. But was it inclusive of Canadian First Nations
11 claim, opioid-related claims?

12 A I can't answer that because there was nothing specific
13 about the claims. I simply bounded the total liabilities.

14 Q I see. So your references to claims herein are derived
15 from information contained in the Debtors' plan and
16 disclosure statement; is that correct?

17 A Correct.

18 MR. UNDERWOOD: All right, thank you. No further
19 questions.

20 THE COURT: Okay. All right. As I was starting
21 to say, I don't have any further and I believe no one else
22 does at this point either. Is there any redirect?

23 MS. HUDSON: No, Your Honor.

24 THE COURT: Okay. So Miss Horewitz, you can sign
25 off. Thank you.

1 MS. HOREWITZ: Thank you.

2 MS. HUDSON: Your Honor, with that, I believe my
3 colleague, (indiscernible) will be (indiscernible).

4 THE COURT: Okay. So the next witness listed is
5 Mr. Gotto.

6 MR. BLABEY: Yes, good afternoon, Your Honor.
7 David Blabey from Kramer Levin Naftalis & Frankel on behalf
8 of the Ad Hoc Committee. Our next witness is Mr. Gary
9 Gotto.

10 THE COURT: Okay. All right, and I see Mr. Gotto
11 on the screen. Would you raise your right hand, sir. Do
12 you swear or affirm to tell the truth, the whole truth, and
13 nothing but the truth, so help you God.

14 MR. GOTTO: I do.

15 THE COURT: Okay. And it's Gary, G-A-R-Y, and
16 Gotto, G-O-T-T-O?

17 MR. GOTTO: That's correct, Your Honor.

18 THE COURT: Okay. So Mr. Gotto, you submitted a
19 declaration in connection with this proceeding or this
20 matter under my order establishing procedures for this
21 hearing. It's intended to be your direct testimony. It's
22 dated August 5th. Knowing that it would be your direct
23 testimony, is there anything in it sitting here today,
24 August 13th, that you would wish to change?

25 MR. GOTTO: No, Your Honor.

1 THE COURT: Okay. Does anyone object to the
2 admission of Mr. Gotto's declaration as his direct
3 testimony?

4 MR. EDMUNDS: Your Honor, Brian Edmunds for the
5 State of Maryland. Again, I would just note that Mr. Gotto
6 is an attorney who represents parties in this matter. And
7 to the extent that the declaration -- I'm looking at various
8 points where it expresses opinions that I think go beyond
9 the nuts and bolts of what happened. I'm not sure he would
10 qualify or will be qualified as an expert to state those
11 things.

12 And I just make that generally to -- I think that
13 the -- I think that's across the board in some cases here.

14 THE COURT: Well, it's hard to know without you're
15 focusing on a specific paragraph. But again, I will note
16 that in evaluating a settlement -- and I believe in large
17 measure that's what Mr. Grotto's declaration goes to -- the
18 Supreme Court and the Circuit asked the Court to review
19 whether the settlement is beneficial and fair and equitable
20 in light of a number of factors, including the costs and
21 risks of litigation, but also the views of interested
22 parties in ultimately determining whether the settlement is
23 a proper exercise of judgment.

24 I think the courts asked for the views of
25 interested parties for a number of reasons, including to

1 determine whether the parties who negotiated the settlement,
2 negotiated it at arms' length on a reasonably well-informed
3 basis, which includes their representation by counsel and
4 their understanding of the legal issues and the other issues
5 that affect the settlement.

6 So I don't view this as expert testimony. I don't
7 view it as necessarily stating the truth of the underlying
8 issues or someone's view of the underlying issues, but I do
9 believe that it's perfectly appropriate to admit it as a
10 description of what a party playing an important role in the
11 negotiations perceived those negotiations and how they
12 unfolded.

13 So I guess unless you identify some particular
14 paragraph that crosses the line on those issues, my
15 inclination is, to the extent this is an objection, to
16 overrule it.

17 MR. ECKSTEIN: Your Honor, this is Mr. Eckstein.
18 Can I just make one observation on this point?

19 THE COURT: Okay.

20 MR. ECKSTEIN: I would like to just make clear for
21 the record that Mr. Gotto, like Mr. Guard, served throughout
22 the case as a member of the ad hoc committee, not as counsel
23 to the ad hoc committee, and in that capacity, they
24 functioned essentially as principals in the case. And this
25 is -- and he was also a member of the subcommittee that was

1 responsible for negotiating the abatement plans.

2 And so, this declaration is provided as actual
3 testimony based upon Mr. Gotto's activities as a principal
4 of the ad hoc committee and a participant in the abatement
5 subcommittee.

6 THE COURT: Right. It's clear from his
7 declaration that he's a negotiating party.

8 MR. EDMUNDS: Your Honor, I think my objection may
9 be satisfied by your statement that the matters that are
10 admitted may not be considered, you know, for the truth of
11 what's in them and they're just party opinions. I think the
12 parties need to (sound glitch) in court.

13 THE COURT: Well, it depends -- I mean, it depends
14 on how -- what matters you're referring to. Yes, in terms
15 of analysis of litigation, absolutely.

16 MR. EDMUNDS: Yeah.

17 THE COURT: If it's reporting on the course of a
18 negotiation, that's fact testimony and it's what the witness
19 perceived, not anything more than that.

20 MR. EDMUNDS: My objection is just with respect to
21 the former, not the latter.

22 THE COURT: Okay.

23 MR. EDMUNDS: So I think that that covers it.

24 Thank you, Your Honor.

25 THE COURT: Very well. So I will admit Mr.

1 Gotto's declaration.

2 MR. BLABEY: Your Honor, I'm not sure if any party
3 wishes to cross, but I would just note that you had asked
4 Professor Gowrisankaran a question yesterday about the
5 creation of the note TDP. I think that Mr. Gotto would
6 probably be able to answer that question. I'd be happy to
7 ask him or --

8 THE COURT: No. I think I take that away from his
9 declaration. They're really two different witnesses and two
10 different questions. So I may have that question asked at
11 some point, but I don't think we need to get that out at
12 this point.

13 So does anyone want to cross-examine Mr. Gotto?

14 MR. ROBINSON O'NEILL: Your Honor, Tad Robison
15 O'Neill on behalf of the State of Washington, just briefly.

16 THE COURT: Okay.

17 CROSS-EXAMINATION OF GARY GOTTO

18 BY MR. ROBINSON O'NEILL:

19 Q Good morning, Mr. Gotto.

20 A Good morning, Mr. O'Neill.

21 Q You actually represent King County in Washington State;
22 is that correct?

23 A That's correct.

24 Q It's nice to talk to you again. We've had many
25 conversations. I want to focus you on the NOAT abatement

1 trust, which has been adopted in the plan. I don't know if
2 you've got a copy of it with you, but my suspicion is you
3 know very well the terms of that.

4 A I am very familiar with it. I can access a copy of it
5 easily if need be. I don't have it in front of me at the
6 moment.

7 Q In Paragraph 8 of your declaration, you indicate -- and
8 I'll wait for you to get there. I'm sorry, sir.

9 A I'm there.

10 Q And actually, I meant Paragraph 9. I apologize.

11 A Okay.

12 Q At the -- in the representation or in the negotiation
13 of this trust, would you agree with me that abatement and
14 the public good that the money could be spent was at the
15 core of the negotiations?

16 A Absolutely.

17 Q And you understand the NOAT Trust to bind the state,
18 for example, the State of Washington, to follow either a
19 separate agreement or the default conditions that are in the
20 NOAT Trust on how to spend the money; is that correct?

21 A Yes. Distributions under the trust are made subject to
22 its terms, including the terms on how the money is going to
23 be expended.

24 Q And that will be part of the court order in this case
25 if the confirmation is granted; is that correct?

1 A That's my understanding.

2 Q And the agreement also includes enforcement provisions,
3 which would allow King County or any other municipality in
4 Washington State to resort to court to enforce the terms of
5 the trust; is that correct?

6 A There are provisions to that effect depending on the
7 Bankruptcy Court's retention of jurisdiction, yes.

8 Q And there -- you're not aware of any state involved in
9 this Purdue bankruptcy or any other local government that
10 has objected on the basis of this NOAT Trust or the
11 requirement that the money be spent on abatement, are you?

12 A I'm not aware of any.

13 Q Thank you. That's all the questions I've got for you.

14 THE COURT: Okay. Does anyone else want to cross-
15 examine Mr. Gotto? Okay. Mr. Gotto, I've reviewed your
16 declaration, and I just -- I want to make sure I'm looking
17 for one note. No, I don't have any questions on it. Is
18 there any redirect?

19 MR. BLABEY: No, Your Honor.

20 THE COURT: Okay, all right. Well, I will ask the
21 question you wanted to get in.

22 Mr. Gotto, did you have a role in negotiating and
23 preparing the terms of the NOAT Trust, including for
24 distribution purposes?

25 THE WITNESS: Yes, Your Honor, certainly in the

1 context of the abatement term sheet that was agreed upon in
2 2020, which then is essentially becomes the NOAT Trust TDP.

3 THE COURT: Okay, all right. Thank you. All
4 right, you can sign off, sir.

5 MR. GROTO: Thank you, Your Honor.

6 THE COURT: Thank you. All right. The next
7 witness is Mr. Weinberger. It's about quarter to 1:00. I
8 don't know whether there's going to be -- whether there's
9 any estimate of how long he will take.

10 MR. BLABEY: Your Honor, Mr. Weinberger, as I
11 believe Mr. Kaminetzky had indicated in his communication to
12 chambers, is not available until 2:00.

13 THE COURT: All right.

14 MR. BLABEY: So now could be a good time for a
15 lunch break if we wanted to.

16 THE COURT: Okay, that's fine. That's where I was
17 heading anyway. So we'll break and return at 2:00. If you
18 could just make sure Mr. Weinberger is ready to testify at
19 that point and we'll proceed then with him. Thank you.

20 (Recess)

21 THE COURT: Okay. Good afternoon everyone. This
22 is Judge Drain and we're back on the record in re: Purdue
23 Pharma, L.P., et al. I think our next witness is Mr.
24 Weinberger, correct?

25 MR. BLABEY: That is correct.

1 THE COURT: Okay.

2 MR. BLABEY: Good afternoon, Your Honor. David
3 Blabey from Kramer Levin on behalf of the Ad Hoc Committee.
4 Samuel Issacharoff will be presenting Mr. Weinberger.

5 THE COURT: Okay. And I see Mr. Weinberger there.
6 Would you raise your right hand, please? Do you swear or
7 affirm to tell the truth, the whole truth and nothing but
8 the truth, so help you God?

9 MR. WEINBERGER: I will.

10 THE COURT: Okay. Thank you. Mr. Weinberger, you
11 submitted a Declaration in this matter dated August 5, 2021,
12 under my Order establishing procedures for this hearing. It
13 was intended to be your direct testimony. Understanding
14 that and sitting where you are today on August 13th, is
15 there anything in your Declaration that you would wish to
16 change?

17 MR. WEINBERGER: No, Your Honor.

18 THE COURT: Okay. Does anyone object to the
19 admission of Mr. Weinberger's Declaration as his direct
20 testimony? Okay. I will admit it. Does anyone want to
21 cross-examine Mr. Weinberger? Okay.

22 Mr. Weinberger, I had a couple of questions for
23 you assuming that, again, there's no cross. The first goes
24 to the discussion that you have on the attorneys' fees
25 provision in Section 5.8 of the Plan and that starts at

1 paragraph 55 of your Declaration. You note that the Plan
2 and that Section establishes two separate funds for
3 attorneys' fees. One is from 10 percent of the money
4 received by the National (indiscernible) Abatement Trust and
5 Tribal Abatement Trust Fund not to exceed \$500 million. And
6 then the second is described in paragraph 57, is 5 percent
7 of each of the settlements reached with the groups of
8 private creditors. The -- as I understand it, the first
9 fund is to be allocated or awarded by a third-party panel of
10 arbitrators and then, ultimately, the Court retains
11 jurisdiction over both payment and appeals from that panel.
12 And that's with regard to \$275 million to be allocated. And
13 then it says, the remaining \$225 million will be allocated
14 by the states according to their internal processes. And I
15 just wanted you to elaborate on that last sentence. To your
16 knowledge, how is that allocated among the states? Are you
17 aware whether they have an agreement on that or is that
18 still to be resolved? And if so, is there a default
19 mechanism if they are not able to reach an agreement?

20 MR. WEINBERGER: Your Honor, I don't have personal
21 knowledge with which to answer that question because, as
22 liaison counsel for the MDL, I have only personal knowledge
23 as to what the Plan procedure is with respect to the monies
24 that go into the MDL, which is the \$275 million. The \$225
25 million, which is to be allocated among the state, is

1 something over which the arbitrators and the Arbitrator
2 Agreement and Order has nothing to do with. And so, in that
3 regard, I cannot answer your question because I don't know -
4 - I don't have the information --

5 THE COURT: Okay.

6 MR. WEINBERGER: -- with respect to --

7 THE COURT: That's fine. It wasn't clear to me,
8 and I guess I'll have to ask counsel for one or more of the
9 states about that section. The other question I had is, I
10 want to take you back to the first part of your Declaration
11 where you, in paragraph 6, discuss your experience in mass
12 tort situations and your role as court appointed Plaintiff's
13 Executive Committee counsel or co-counsel in a number of
14 different multi-district litigations. And then you state
15 that you're currently serving as court appointed Plaintiff's
16 lead liaison counsel and counsel to the Plaintiff's
17 Executive Committee in the multi-state -- I'm sorry, the
18 multi-district litigation in Cleveland. Which, until this
19 bankruptcy case, included in a very large measure, Purdue
20 Pharma, as well as involved the Sackler family members. So,
21 I'm inferring, but I would like your answer to this
22 question, that in that role, you and the other Plaintiffs
23 that you're working with, have a goal to maximize recoveries
24 in respect of those claims. Is that a fair inference to
25 make?

1 MR. WEINBERGER: That is correct, Your Honor.

2 THE COURT: Okay. In fact, that is your role, I
3 gather?

4 MR. WEINBERGER: Very much so. That is the
5 highest of our priorities. Yes, Your Honor.

6 THE COURT: Okay. And you're familiar, I assume,
7 with the fact that under this Plan, the Bankruptcy Plan
8 that's before me, that is, not only would the debtor or the
9 debtors get a discharge, but there would be broad releases
10 of the released parties and shareholder released parties,
11 which would include the Sackler family and their companies.
12 We've heard testimony and exhibits as to the potential
13 liability of those third parties to creditors of these
14 debtors. And I'm not asking to evaluate that liability, but
15 knowing your primary, really exclusive, role to maximize
16 recoveries, why would your clients -- why do your clients
17 support that aspect of the settlement in this Plan, the
18 settlement of the third-party claims?

19 MR. WEINBERGER: Your Honor, any time one
20 evaluates a settlement, whether in a bankruptcy scenario
21 such as this one, or in any other case, in evaluating any
22 settlement, one takes into account what is the liability,
23 whether there is potential recovery and what is, in terms of
24 damages, and what is the defendant's ability to pay. And in
25 this case, where, admittedly, the abatement costs associated

1 with abating this opioid prescription pill epidemic is
2 enormous and far exceeds what has been proposed in this
3 bankruptcy, the plaintiff's lawyers in the MDL and the PEC,
4 specifically the 21 firms who lead this and who have
5 appointed me as liaison counsel with the court's consent,
6 have evaluated all those factors and waived continued
7 litigation against the Sackler family and Purdue versus what
8 has been offered and have determined that this is an
9 appropriate, fair, settlement in light of all those
10 circumstances. And it is why we recommend that it be
11 accepted.

12 THE COURT: Okay.

13 MR. WEINBERGER: I might add, if you don't mind,
14 Your Honor, to that answer.

15 THE COURT: Go ahead.

16 MR. WEINBERGER: Since my Declaration and my
17 testimony is directed to Section 5.8, that the other factor
18 that is extremely important is that, as Judge Polster stated
19 from the very beginning, the importance of this litigation
20 is to maximize the recovery of costs associated with abating
21 the epidemic. And so, the way in which 5.8 works in terms
22 of fees, that would go into this fund as well as associated
23 issues associated with contingent (indiscernible) contracts
24 which, the political subdivisions are being relieved of, is
25 further -- furthers our goal of putting as much money into

1 the abatement remedy as possible under these circumstances
2 and this, Your Honor, takes into account the fact that -- I
3 can speak for myself and for my colleagues, I have devoted
4 nearly four years of my professional life, full-time, on
5 this project, as have hundreds of lawyers represented by the
6 21 Plaintiff's Executive Committee firms and firms outside
7 of the PEC. And I can tell you that, to a person, to a
8 lawyer, the importance of creating an abatement fund to deal
9 with this national health crisis, is our number one
10 priority.

11 THE COURT: Okay. Thank you. Does anyone wish to
12 cross-examine Mr. Weinberger on those questions, or his
13 answers to those questions?

14 MR. O'NEILL: Your Honor, Tad Robinson O'Neill
15 from the State of Washington.

16 THE COURT: Go ahead Mr. Robinson -- Mr. O'Neill,
17 excuse me.

18 CROSS-EXAMINATION OF PETER H. WEINBERGER

19 BY MR. O'NEILL:

20 Q Mr. Weinberger, the PEC is involved in litigation other
21 than Purdue in relation to opioids. Is that correct?

22 A That is correct.

23 Q And there have been multiple settlements, national
24 settlements announced in recent -- in over the last year.
25 Is that correct?

1 A Yes, that is true. Specifically, the settlements
2 involving the three distributors and Johnson & Johnson,
3 which was announced about a year ago, but finalized in terms
4 of paperwork within the last three weeks, subject to
5 critical mass agreements by both the states and political
6 subdivisions.

7 Q And the volume of those settlements is far in excess of
8 the amount of money that would be paid under this
9 Confirmation Plan into a NOAT or an abatement fund. Is that
10 correct?

11 A Well, to be clear, what these settlements provide is,
12 \$26 billion, that's assuming that there's 100 percent
13 agreement among all the political subdivisions and all of
14 the states. Yes, it provides for \$26 billion paid out over
15 a period of 18 years, 18 years as to the distributors and
16 then a shorter period of time as to Johnson & Johnson.

17 Q And there are other cases, like the McKinsey case or
18 the Mallinckrodt bankruptcy where abatement funds are also
19 being distributed. Is that correct?

20 A Well, the McKinsey case is a case that was resolved by
21 the State's Attorney General and the political subdivisions,
22 both in the MDL and outside the MDL, have not -- some of
23 whom are pursuing these cases, have not resolved those
24 cases. So, that's the case with McKinsey. And what was
25 your other -- what was the other --

1 Q Mallinckrodt was the other bankruptcy.

2 A Well, Mallinckrodt is similarly in bankruptcy and so
3 there is a resolution associated with that bankruptcy, yes.

4 Q In any of those other cases, is there a billionaire
5 family involved seeking releases to the scope here?

6 A Not that I'm aware of.

7 Q In any of those other cases, are states being
8 threatened with the extinguishment of their direct claims
9 without a consensual release?

10 A Can you rephrase that question please? I don't quite
11 understand it.

12 Q Sure. Well, in this Confirmation Plan, if it's
13 approved, the State of Washington's direct claims against
14 the Sacklers would be extinguished by a non-consensual
15 third-party release. Do you understand that?

16 A I understand it.

17 Q In any of the other abatement work on opioids, are you
18 aware of the state being forced into a non-consensual
19 release of its claims against what the state considers to be
20 a wrong here?

21 A I'm not aware of that, but I don't know if this answers
22 your question or not, but I know --

23 Q And if you don't know, we'll just stop there. I mean,
24 I don't want to -- I don't want to get too far off of what -
25 - where we are.

1 A I wasn't getting too far off field, but I think for
2 clarification purposes, if you don't mind --

3 Q All right. Go ahead, clarify.

4 A So, for example, with respect to the settlement
5 involving McKesson, Cardinal Health and AmerisourceBergen,
6 there are a myriad list, a large list, of affiliated
7 companies that are being released as a result of that
8 settlement. I can't speak to any particular individuals,
9 but it wouldn't surprise me if it included officers and
10 board members of all those corporate entities.

11 Q All right. And this is just -- the last question I
12 would ask you is, in the context of this case, does your
13 support for the Confirmation Plan in any way condone the
14 activities of the Sacklers in management of Purdue Pharma
15 over the last two decades?

16 A No, of course not. It doesn't condone any of their
17 conduct and in fact, I think it is our efforts that
18 uncovered that the direct conduct and behavior of a number
19 of members of the Sackler family in the way in which the
20 company was directly operated by them, and our litigation
21 strategy to pursue the Sackler family, was, I believe, a
22 significant factor in bringing the Sackler family to the
23 table to tender with Purdue almost \$5.5 billion, which --
24 I'm not trying to pat ourselves on the back. It is what we
25 do, as litigators, and in representing more than 2,000

1 political subdivisions in this litigation, I believe, our
2 efforts result in a substantial benefit to the Abatement
3 Plan that (indiscernible).

4 Q (indiscernible), you didn't get sign on by all of the
5 states, did you?

6 A You broke up again. I'm sorry.

7 Q You did not get sign on by all of the states, did you?

8 A Well, the -- under the terms of the Agreement, the
9 states have 30 days from the date that it was executed to
10 consent. Those 30 days have not run, so I --

11 Q Is there a condition in that settlement that 100
12 percent of the states have to be called, that the company
13 receive global fees?

14 A The way that the Agreement works, Mr. O'Neill, is that
15 within that 30-day period of time, and I think we're coming
16 up on the time within the next week or so, the states will
17 determine whether or not they consent and it is then the
18 decision of the three distributors looking at that deal
19 alone, to determine whether or not they have achieved, in
20 their discretion, a critical mass. If they determine that
21 critical mass has been achieved, then the next phase of
22 consent process kicks in and the political subdivisions in
23 the states who have consented to the Agreement then have 120
24 days to determine whether or not to consent to the
25 settlement and again, the three distributors then have the

1 ability to determine whether or not critical mass was
2 achieved at the political subdivision level.

3 Q Is it clear to you -- if it's true, that critical mass
4 does not (indiscernible). Is that right?

5 A Since the decision on critical mass is now defined in
6 the Agreement and since the political subdivisions, who I
7 represent, have no say so as to what constitute critical
8 mass, I don't know that I can agree to that statement.
9 (indiscernible)

10 Q Thank you, Mr. Weinberger.

11 A Sure, Mr. O'Neill.

12 THE COURT: Okay. Does anyone else have questions
13 for Mr. Weinberger based on any of my questions or Mr.
14 O'Neill's.

15 MR. HUEBNER: I do, Your Honor. I have about five
16 questions, and it should be (indiscernible) brief.

17 THE COURT: Okay.

18 CROSS-EXAMINATION OF PETER H. WEINBERGER

19 BY MR. HUEBNER:

20 Q Mr. Weinberger, good afternoon. I'm Marshall Huebner
21 representing Purdue. A couple of quick questions for you.
22 Are you aware that there are aspects of the settlement with
23 the Sacklers that are not financial, but rather relate to
24 other types of covenants?

25 A Yes, I am aware of that.

1 Q Was it important to your client that the Sacklers be
2 completely removed from any and all further involvement with
3 Purdue until the end of time?

4 A Yes, that was certainly an important part of the
5 resolution.

6 Q Are you aware that the settlement requires the Sacklers
7 to exit the pharmaceutical business (indiscernible) within a
8 specific period of time?

9 A Yes.

10 Q Was that important to your clients?

11 A Yes.

12 Q Have you or the Sacklers agreed to (indiscernible) with
13 respect to naming rights with respect to charitable
14 organizations and if I can ask if you view that as a
15 positive and was important to your clients?

16 A Yes, it was.

17 Q Are you aware that a document repository of tens of
18 millions of documents, including many categories of
19 (indiscernible) privileged documents is going to be created
20 by this case to be available to the public for years or
21 decades or possibly (indiscernible)?

22 A Mr. Huebner, I think of all the aspects of what I would
23 call the injunctive relief part of this, that it may be the
24 most important because this document repository, which tells
25 the story of Purdue and the Sacklers, is extremely important

1 from the standpoint of, not only what it is that we
2 developed in terms of evidence, perhaps that's the least
3 important part of it, as much as lessons to be learned from
4 the conduct that was uncovered and revealed. And so, this
5 public document, which no doubt, if this case went to trial,
6 would come out at trial and now is in this document
7 repository, which is available to the public and can be
8 studied and written about, is extremely important. Sorry
9 for that long-winded answer, but --

10 Q Mr. Weinberger, I share that view, so I'm actually
11 asking a follow up question to you about that. If you know,
12 does the document repository in the McKinsey settlement
13 repository include attorney/client privilege documents
14 (indiscernible) public domain?

15 A I'm sorry. I don't know the answer to that question.

16 Q That's okay. One last question, you said four years of
17 your life, full-time, have been on this case. To make sure
18 I understand, is that four years full-time suing Purdue and
19 the Sacklers, for which you believe to be their
20 (indiscernible) in the opioid crisis?

21 A It is my -- it constitutes my entire involvement in all
22 aspects of the multi-district litigation, which includes,
23 obviously, cases brought against a number of other
24 defendants.

25 Q Mr. Huebner, my apologies, just one very last question

1 based on something Mr. O'Neill (indiscernible). You listed
2 the case settlements, I think, Mallinckrodt and the
3 distributors, in any of those cases, are the owners of the
4 company that made or committed the product at issue paying
5 anything (indiscernible) or did any of the companies
6 themselves, which would primarily (indiscernible)?

7 A Yes, it's only the company themselves and I think it's
8 important to point out that, to my knowledge, with respect
9 to all of the defendants, all of the other defendants in
10 this case, that Purdue was the only closely held corporation
11 that was a defendant.

12 Q Okay and is it fair to say -- and with this I will wrap
13 up, that you actually approach each situation differently
14 and you settle on terms that you believe appropriate to
15 further the goals that you testified about before, including
16 abatement and frankly, (indiscernible), you believe that
17 (indiscernible)?

18 A That is correct.

19 Q I have no further questions. Thank you, Mr.
20 Weinberger.

21 A You're welcome.

22 MR. O'NEILL: Your Honor, Tad Robinson O'Neill
23 with just a follow up question, if I may.

24 THE COURT: Well, I'll let you, but let me just
25 have other folks who want to cross go first --

1 MR. O'NEILL: I'll wait.

2 THE COURT: -- then you can come back.

3 MR. GOLDMAN: Your Honor, may I? I'm sorry. I'm
4 glad to yield to the other gentleman.

5 THE COURT: To Mr. O'Neill? That's fine.

6 MR. GOLDMAN: Oh no. I mean, as long as I can
7 reserve my --

8 THE COURT: Sure. Yeah.

9 MR. GOLDMAN: Okay. That's fine.

10 MR. JOHNSON: Your Honor, this is Evan Johnson
11 (indiscernible).

12 THE COURT: Okay.

13 MR. JOHNSON: May I be heard?

14 THE COURT: Sure.

15 MR. JOHNSON: Thank you, Your Honor. Again, Evan
16 Johnson, (indiscernible). We represent Johnson & Johnson in
17 this case. I just want to note for the record that there
18 was some discussion of a recent settlement involving Johnson
19 & Johnson and I think (indiscernible) that settlement is
20 actually correct, but I'm not involved in that settlement,
21 so I don't want there to be suggestion that by listening to
22 that testimony, not raising an issue, (indiscernible). I've
23 seen situations where courts have ruled by (indiscernible).

24 THE COURT: I understand your point, Mr. Jones and
25 I can't imagine there would be any estoppel here. It's a --

1 Mr. Weinberger was briefly summarizing a settlement that I'm
2 sure is quite lengthy and complex and not getting into the
3 merits, at all, of the underlying claims. So, there's no
4 estoppel effect on your client.

5 MR. JOHNSON: Thank you, Your Honor.

6 THE COURT: Okay. So, it's either Mr. Goldman or
7 Mr. O'Neill, whichever one of you wants to --

8 MR. GOLDMAN: I'll take the turn, Your Honor.

9 THE COURT: Okay.

10 MR. GOLDMAN: I just have a few questions.

11 CROSS-EXAMINATION OF PETER H. WEINBERGER

12 BY MR. GOLDMAN:

13 Q Mr. Weinberger, the document repository that you were -
14 - had a colloquy with Mr. Huebner on, is only going to be
15 created and publicly accessible after the Plan is confirmed,
16 correct?

17 A That's correct.

18 Q And that's after the Sacklers have walked off with
19 their third-party releases, correct?

20 A I don't know that for sure.

21 THE COURT: Assume that that's the case, Mr.
22 Weinberger.

23 MR. WEINBERGER: Okay.

24 THE COURT: Okay.

25 BY MR. GOLDMAN:

1 A Assuming that to be the case, the answer is yes.

2 Q Okay and once that's created, it's possible that we
3 could see even more inculpatory evidence of Sackler
4 culpability in this matter that exists now?

5 MR. HUEBNER: Your Honor, I'm sorry. Objection as
6 to form. I don't know who "we" is. There is a Protective
7 Order in this case and (indiscernible) have seen 100 million
8 pages plus of documents. I'm not sure what Mr. Goldman is
9 getting at. I know he's joined to the case relatively
10 recently and may not know that his clients have access to --

11 THE COURT: Well, okay. I understand your
12 objection. When you say --

13 MR. GOLDMAN: The public.

14 THE COURT: Are you talking about the public?

15 MR. GOLDMAN: Yes.

16 THE COURT: The general public?

17 MR. GOLDMAN: Yes.

18 THE COURT: All right.

19 MR. HUEBNER: Mr. Weinberger, that's certainly
20 fine.

21 THE COURT: Okay, so, do you remember the
22 question, Mr. Weinberger? Is it possible that after the
23 public release of the document repository, that the general
24 public might see more evidence than currently exists in the
25 public record showing the Sackler's potential liability or

1 liability?

2 BY MR. GOLDMAN:

3 A Yes.

4 Q I was also going to ask you, was your group part of the
5 discussions that took place in the months leading up to the
6 Chapter 11 Plan?

7 A Yes.

8 Q And was it supportive of the settlement framework as
9 where the other states would sign on to it?

10 A Yes, the Plaintiff's Executive Committee and the
11 negotiated -- the subcommittee, which was the negotiated
12 committee, was supportive -- well, I can't say that it was -
13 - that we had come to final terms, but the structure of the
14 settlement and the offer that was on the table -- and I
15 can't tell you chapter and verse what that was, was
16 something that the Plaintiff's Executive Committee was
17 optimistic about and on board with. But it had not been
18 finalized, certainly, as of the time of the filing of the
19 Petition.

20 Q And how about the (indiscernible)?

21 A It's been proposed. I don't know that we had arrived
22 at a final decision as to whether or not the dollars that
23 were on the table at the time were adequate. I know that
24 they were subject to further discussion. So, I would say,
25 we were having discussions that we thought would continue to

1 be fruitful towards resolution.

2 Q So, you would acknowledge that this is really a matter
3 of line drawing as to their one constituent or set of
4 constituents might consider an acceptable amount for
5 allowing the Sacklers to walk off with releases?

6 A I'm sorry. I don't understand that question.

7 Q Before a party, even your constituents, would actually
8 sign off on a settlement with the Sacklers which involves
9 third-party releases, you need to be satisfied with the
10 amount that was being contributed was sufficient to do that,
11 correct? And what I'm asking is, you acknowledged that
12 different constituents would view that amount differently
13 and come to a different conclusion as to what should be
14 contributed in order to gain those third-party releases.

15 A Well, let me answer it this way, Mr. Goldman. Any time
16 you are involved in settlement discussions, you draw a line,
17 and you evaluate the entire situation, including the factors
18 that I testified previously about, and you ultimately make a
19 recommendation to the client and determine what your bottom
20 line is going to be. So, could somebody else evaluate it
21 differently? I suppose, but we -- knowing what we knew then
22 and what we had uncovered and how we analyzed the case, I
23 think we were heading in the direction of a potential
24 resolution that we certainly were prepared to recommend to
25 our constituents.

1 Q Understood. And I'm sure you would be pleased if there
2 was an additional amount of money contributed, would you
3 not?

4 A Well, since our goal is always to maximize the recovery
5 in any situation like this, I guess the answer is yes.

6 MR. GOLDMAN: No further questions, Your Honor.

7 THE COURT: Okay. Mr. O'Neill?

8 MR. O'NEILL: Tad Robinson O'Neill from the State
9 of Washington.

10 CROSS-EXAMINATION OF PETER H. WEINBERGER

11 BY MR. O'NEILL:

12 Q Mr. Weinberger, I just want to clarify, Mr. Huebner
13 (indiscernible) suggest that the document repository --
14 well, I wasn't clear, but I wanted to clarify. It doesn't
15 include Sacklers waiving attorney/client privilege, but just
16 Purdue itself. Is that right?

17 A I don't know those details.

18 Q Fair enough. It's in the documents anyway. All right.
19 Thank you.

20 THE COURT: Okay. Any more questions for Mr.
21 Weinberger?

22 MR. GOLDMAN: Your Honor, if I may, just a couple
23 of redirects.

24 THE COURT: Does anyone have any more cross for
25 Mr. Weinberger before we go to redirect? No? Okay. You

1 can go ahead, Mr. (indiscernible).

2 REDIRECT EXAMINATION OF PETER H. WEINBERGER

3 BY MR. (indiscernible):

4 Q Mr. Weinberger, your Declaration is almost exclusively
5 on Section 5.8, but much of the questioning has been about
6 the (indiscernible) the bankruptcy proposal. Could you just
7 say something about the basis of your opinion on the
8 bankruptcy proposal at large (indiscernible) supported.

9 A Yes. I think I expressed it earlier but let me be
10 clear. It is my view, in part because of the work that we
11 contributed to pre-bankruptcy, that we created substantial
12 global through the creditors in this case by bringing both
13 Purdue and the Sacklers to the table with the tender of \$5.5
14 billion to maximize -- and that the structure of this, which
15 maximizes the amounts for abatement, is a very important
16 part of the work that we did pre-Petition to facilitate this
17 resolution. And I don't want to be repetitive, but it goes
18 without saying that, in addition, the injunctive relief,
19 which includes document repository, which tells a story,
20 which file would -- I mean, there's another way of doing it,
21 which would be a trial, but in this case, this allows the
22 public to understand the story and to learn from it and to
23 have people publish about it, as well as the other
24 injunctive relief, was an extremely important part of the
25 resolution, and light is that the PEC supports this

1 reorganization Plan.

2 Q And one last question, Mr. Weinberger. In your
3 Declaration, you describe the amount of hours that was spent
4 pre-Petition and also the millions and millions of pages of
5 documents that were reviewed by AI manually. What's your
6 assessment about how central the inquiry into the review and
7 the Sacklers was in the work that you can see and
8 (indiscernible) bankruptcy filing.

9 A Sure. So, this case began with Purdue. This case
10 began with Purdue in its development of OxyContin and its
11 marketing of OxyContin. And then, flowing from that, were
12 the other manufacturers who was the opportunities -- the
13 same opportunities and proceeded along the same lines of
14 marketing. And then the other parts of the distribution
15 chain, which includes the distributors and the pharmacies,
16 the retail, chain pharmacies, all of whom are defendants in
17 the litigation that we pursued, all followed from that. But
18 to the way in which Purdue's story changed the paradigm of
19 the use of controlled substances to treat pain and the way
20 that it marketed that, was and remains a central part of the
21 story, and in any litigation involving any of the other
22 defendants, is a very important part of the story.

23 MAN 3: That's all I have, Your Honor.

24 THE COURT: So, just to make sure the record is
25 clear, Mr. Weinberger, when you say, "this case", you're

1 referring not to just this Purdue case, but basically to the
2 multi-district litigation as a whole, correct?

3 MR. WEINBERGER: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. WEINBERGER: Yes, Your Honor.

6 THE COURT: All right. Does anyone have any more
7 questions for Mr. Weinberger? I normally ask --

8 MAN: Your Honor --

9 THE COURT: Oh, go ahead. I'm sorry.

10 MAN: I just wanted to make one observation in Mr.
11 Weinberger's finish before you move to the next witness. I
12 just wanted to point out, Your Honor, for the record, in
13 response to an observation that you made at the outset of
14 the questioning. That, in addition to Mr. Weinberger's
15 testimony, I wanted to bring Your Honor's attention to
16 portions of Mr. Guard's Declaration, particularly beginning
17 with paragraph 72, running through paragraph 79, which also
18 addresses the (indiscernible), but from the state's
19 perspective. So, I want you to be aware --

20 THE COURT: I'm very aware of that. Thank you.

21 MAN: Okay, I just --

22 THE COURT: Yeah. I just -- that one sentence in
23 his Declaration, I just wanted to know if he could amplify
24 on it, and I appreciate his answer.

25 MAN: Very well, Your Honor.

1 THE COURT: Okay. I'd normally say you could step
2 down Mr. Weinberger, but instead, you can sign off.

3 MR. WEINBERGER: Thank you, Your Honor.

4 THE COURT: Okay. All right. I think with the
5 next set of witnesses, we're really dealing with different
6 introducing parties and counsel. And the first witness is
7 Timothy Martin.

8 MR. JOSEPH: Yes, Your Honor. Gregory Joseph for
9 the Raymond Sackler Family and we're presenting Mr. Martin.
10 And I will observe he also gave a Declaration that relates
11 to the belt of the A side of the Mortimer Sackler Family,
12 and it may be, although nobody indicated an interest in
13 crossing him before today, it may be efficient to have any
14 questioning concerning him take place at one time, if that
15 suits the Court.

16 THE COURT: Okay, well I have his -- I have before
17 me his Declaration on the Side B. I haven't gone over the
18 other one yet. So, we'll see if there are questions on Side
19 -- on his -- I take it there are two other -- there are two
20 Declarations, both August 4, 2021?

21 MR. JOSEPH: I don't know the date of the A side.

22 THE COURT: There are two separate ones.

23 MR. JOSEPH: Correct, yes. This -- the file that
24 you have is just the B side.

25 THE COURT: Okay, well, you know what? I will

1 swear him in on both and we'll see if there's cross. If
2 there is to be cross, we may have to take him at a different
3 time. I'll review the other one separately, but I guess
4 enough said on that point. And I think, with all of your
5 witnesses and the Side A witnesses, they are governed by the
6 stipulation that was read into the record yesterday between
7 the Sackler families and the states in Connecticut, Oregon,
8 Washington and the District of Columbia.

9 MR. JOSEPH: Yes, Your Honor.

10 THE COURT: Okay. All right. So, Mr. Martin,
11 would you raise your right hand, please? Do you swear or
12 affirm to tell the truth, the whole truth and nothing but
13 the truth, so help you God?

14 MR. MARTIN: Yes, Your Honor.

15 THE COURT: Okay. And it's Timothy and then, M-A-
16 R-T-I-N?

17 MR. MARTIN: That's correct.

18 THE COURT: Okay. So, Mr. Martin, you submitted a
19 Declaration intended to be your direct testimony under my
20 Order governing the procedures in this matter dated August
21 4, 2021, to which you've attached an Amended Expert Report
22 of Timothy J. Martin on behalf of the Raymond Sackler
23 Family, sometimes referred to as the Side B Family. Knowing
24 that this would be your direct testimony for this hearing,
25 sitting where you are today, August 13th, is there anything

1 in the Declaration or the Expert Report that you wish to
2 change?

3 MR. MARTIN: No, Your Honor.

4 THE COURT: Okay. I'm going to ask you the same
5 question with regard to your Declaration regarding the
6 Expert Report on the Side A or Mortimer Sackler Family. Is
7 there anything, knowing that that would be your direct
8 testimony also for this hearing, in those documents that you
9 would wish to change?

10 MR. MARTIN: Your Honor, let me just clarify
11 something with counsel. The Family A Report was a Facts
12 Declaration --

13 THE COURT: Okay.

14 MR. MARTIN: and not a --

15 THE COURT: Not an expert report, all right.

16 MS. MONAGHAN: That's correct, Your Honor.

17 THE COURT: Okay. All right. Well, you know, Mr.
18 Joseph, since I haven't reviewed it, I may need to have Mr.
19 Martin come back to testify on that.

20 MR. JOSEPH: That's fine, Your Honor. He was only
21 here on the B side originally. This just came up today, an
22 inquiry from Maryland.

23 THE COURT: All right. And let me just ask, will
24 anyone want to cross-examine Mr. Martin on the Side A
25 Declaration? All right. So, I will let you know whether I

1 need to have any more questions of him based on my review of
2 it, in which case we'll have to put him on again. But since
3 no-one else wants -- no-one wants to cross-examine him, it
4 may be that I'm satisfied after I read it that I don't have
5 any questions based on it.

6 MS. MONAGHAN: Thank you, Your Honor. This is
7 Maura Monaghan from Debevoise & Plimpton on behalf of the A
8 side, just for the record. And we will do whatever is most
9 convenient for everyone.

10 THE COURT: All right. Very well. All right, so
11 focusing then on the B side Declaration and Expert Report,
12 does anyone object to its admission? All right. I will
13 admit the Declaration and the Expert Report that's attached
14 to it as an Expert Report on the topics covered by that
15 report, mainly the financial condition of the B side Family
16 or the Raymond Sackler Family.

17 MR. JOSEPH: Thank you, Your Honor.

18 THE COURT: Does anyone want to cross-examine Mr.
19 Martin on his Declaration and Expert Report?

20 MR. UNDERWOOD: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. UNDERWOOD: Allen Underwood with the firm of
23 Lite DePalma Greenberg Afanador on behalf of certain
24 Canadian Municipal Creditors and certain Canadian First
25 Nations.

1 CROSS-EXAMINATION OF TIMOTHY MARTIN

2 BY MR. UNDERWOOD:

3 Q Mr. Martin, by virtue of the fact that Purdue Canada is
4 an independent associated company, is it not true that its
5 value is being committed to fund the U.S. Plan?

6 MAN 3: Objection. That's beyond the scope of his
7 report and beyond the scope of his expertise.

8 THE COURT: Okay. I think the report was simply
9 to evaluate the -- to put a value on the assets of the
10 Raymond Sackler Family. So, I think --

11 MR. UNDERWOOD: I understand.

12 BY MR. UNDERWOOD:

13 Q So, Mr. Martin, isn't it true that you did not actually
14 perform a full valuation of Purdue Canada, but rather
15 attributed to it an illustrative value for the purposes of
16 your report?

17 A That's correct. No valuation was done on the IACs. It
18 was -- the \$4.5million gross amount was (indiscernible).

19 Q And that illustrative value, isn't it true that it
20 doesn't account for potential loss of value in IACs,
21 including Purdue Canada, following confirmation of this
22 Plan, depending upon what happens post-confirmation, but
23 pre-sale?

24 A The value itself was not intended to be an enterprise
25 value. The IAC is illustrative (indiscernible).

1 THE COURT: I'm sorry, Mr. Martin. You're going
2 to have to come closer to your microphone because you're
3 breaking up.

4 MR. MARTIN: I'm sorry, Your Honor. Is this
5 better?

6 THE COURT: Yes.

7 BY MR. UNDERWOOD:

8 A Okay. I'll just answer that again. You are correct in
9 that the \$4.5 billion amount is an illustrative value. It
10 was not intended to represent the enterprise values. It
11 does not factor in any specific action.

12 Q Isn't it true that the Sacklers will benefit from any
13 post-confirmation pre-sale increase in the value of the
14 IACs?

15 MAN 3: Objection. That's neither relevant, Your
16 Honor, nor is it part of the Expert Report within the
17 expertise. He assessed value as of a point in time,
18 including an illustrative value for the IACs. He wasn't
19 engaged to speculate as to the future.

20 THE COURT: Okay. I think, Mr. Underwood, your
21 point is just a question really as to an interpretation of
22 the Plan as opposed to Mr. Martin's Expert Report, i.e., the
23 Plan provides for what is retained by the Sacklers, which
24 can go up or down in value, but it's not something that Mr.
25 Martin addressed. So, I'll sustain the objection.

1 MR. UNDERWOOD: I'll ask one more question and
2 that's all.

3 THE COURT: Okay.

4 BY MR. UNDERWOOD:

5 Q Isn't it true, Mr. Martin, that your Declaration and
6 your Report does not account for worldwide liability claims
7 and causes of action as to the value of the IACs?

8 A With respect to the IACs, it's strictly an illustrative
9 value. It does not account for any specific liability
10 (indiscernible).

11 Q No further questions. Thank you.

12 THE COURT: Okay. Does anyone else wish to cross-
13 examine Mr. Martin? All right. Do you have any redirect
14 Mr. Joseph?

15 MR. JOSEPH: I do not, Your Honor.

16 THE COURT: Okay.

17 MR. JOSEPH: Thank you.

18 THE COURT: Mr. Martin, you can sign off then.
19 Thank you.

20 MR. MARTIN: Thank you, Your Honor.

21 THE COURT: All right. I think the next witness
22 is Mr. Trompetta. Mr. Joseph, I think you're on mute.

23 MR. JOSEPH: Okay. I guess I'm off mute. I
24 apologize.

25 THE COURT: Now you're off mute.

1 MR. JOSEPH: Mr. Trompetta, is hearing impaired,
2 Your Honor. And we would ask anybody who asks him a
3 question to look directly at the camera because that will
4 assist him in being able to hear and understand what's being
5 said. And we've also arranged, this morning, with Mr.
6 Andino and the Court so that he'll have a real time
7 (indiscernible) to assist him also if there are questions
8 for him.

9 THE COURT: Okay. All right. Well, I want to
10 thank Mr. Andino for that, as well as many other things he
11 and his staff have done for this hearing. Mr. Trompetta, I
12 see you there. Would you raise your right hand please? Do
13 you swear or affirm to tell the truth, the whole truth and
14 nothing but the truth, so help you God?

15 MAN 2: This is his lawyer, Your Honor.

16 THE COURT: Oh, I'm sorry. I was just assuming it
17 was the witness. Is he signing on?

18 MAN 2: Yes, we're told that he is signing on,
19 Your Honor.

20 THE COURT: Okay.

21 MAN 2: There is Mr. Trompetta.

22 THE COURT: All right. Good afternoon. I see you
23 there, Mr. Trompetta. Would you raise your right hand
24 please? Do you swear or affirm to tell the truth, the whole
25 truth and nothing but the truth, so help you God?

1 MR. TROMPETTA: I do.

2 THE COURT: And -- you can take your hand down.

3 And it's Carl, C-A-R-L, Trompetta, T-R-O-M-P-E-T-T-A?

4 MR. TROMPETTA: That's correct.

5 THE COURT: Okay. Mr. Trompetta, you submitted a
6 Declaration in connection with this proceeding, this
7 contested matter, dated July 26, 2021, which was intended,
8 under my Order governing procedures for this hearing, to be
9 your direct testimony. Sitting here today on August 13th,
10 is there anything in this Declaration that you would wish to
11 change?

12 MR. TROMPETTA: No.

13 THE COURT: Okay. Does anyone have any objection
14 to Mr. Trompetta's Declaration being admitted as his direct
15 testimony? Okay. I've reviewed it and hearing no-one, I'll
16 admit it as Mr. Trompetta's direct testimony. Does anyone
17 wish to cross-examine Mr. Trompetta on his Declaration?
18 Okay. I've reviewed the Declaration. I don't have any
19 questions of Mr. Trompetta, so you have a very short
20 appearance here and can be excused. You can sign off.

21 MR. TROMPETTA: Okay. Thank you.

22 THE COURT: Thank you. All right. The next
23 witness is Mr. Hamermesh, but before we call him, there is a
24 pending Motion in Limine by the State of Maryland with
25 respect to this Declaration, which I think we should address

1 first.

2 MS. TONNESEN: Good morning, Your Honor. Sara
3 Tonnesen on behalf of (indiscernible). As you mentioned, we
4 have --

5 THE COURT: Ms. Tonnesen, you're going to have to
6 come a little closer to your microphone, if you can.

7 MS. TONNESEN: All right. Let me see. Can you
8 hear me okay now?

9 THE COURT: It's better. Thank you.

10 MS. TONNESEN: Okay, good. Thank you, Your Honor.
11 As our Motion in Limine to Strike the Declaration of
12 Professor Hamermesh and exclude his testimony
13 (indiscernible) --

14 THE COURT: I'm sorry. Can I interrupt you? Is
15 there any way we can make it louder?

16 MS. TONNESEN: I apologize I don't have a separate
17 microphone. I'll try to keep speaking up.

18 THE COURT: We'll try the sound here too. Okay.
19 Good, thank you. I'm sorry. You have to start over if you
20 want, that's fine.

21 MS. TONNESEN: As our Motion in Limine to Strike
22 the Declaration of Professor Hamermesh --

23 MAN 3: Excuse me, Your Honor. Professor
24 Hamermesh has come on. Shall we have him sign off and so --

25 THE COURT: Mr. Hamermesh, we're dealing with the

1 Motion in Limine on your Declaration, so you can just sign
2 off for the moment.

3 MR. HAMERMESH: Certainly. Thank you, Your Honor.

4 THE COURT: Okay. All right. Time #4, you can go
5 ahead Ms. Tonnesen.

6 MS. TONNESEN: Okay, thanks. Professor
7 Hamermesh's opinions are inadmissible in this case for a
8 number of reasons. First of all, we would argue that
9 Professor Hamermesh's opinions are inadmissible because
10 they're simply not relevant to any decision that's
11 (indiscernible). Professor Hamermesh's Report lays out a
12 hypothetical future litigation and opines on how the Sackler
13 Family acted or didn't act based on a highly selective
14 (indiscernible) own admission is 639 documents in a year
15 versus a million documents. (indiscernible) lengthy
16 statement of assumed facts -- that statement of assumed
17 facts was sort of a sister to the proposed findings of fact
18 and conclusions of law that Your Honor held is inadmissible
19 when you struck the Declaration of Mr. Gregory Joseph in
20 this case during your pre-trial hearing on August 9th, and
21 would argue that the opinions today are sort of akin to that
22 Declaration and that all it really does is put forth a
23 hypothetical case based on an assumed universal fact and a
24 very narrow view of the relevant evidence. And even to that
25 extent, only a cursory review of the evidence and therefore,

1 there's nothing relevant to the Court. Because it's not
2 relevant to any (indiscernible) action you're being asked to
3 decide. I apologize. Let me turn my phone off.
4 (indiscernible) qualified to give (indiscernible) although
5 (indiscernible) interpreting corporate documents
6 (indiscernible). He doesn't actually have the experience
7 that would (indiscernible) opinion as to the complex
8 (indiscernible) issues that are raised in his opinion. I
9 mean, (indiscernible) the number of compliance reports, he
10 had sent us compliance reports and opines that the Sacklers
11 acted -- did not act inconsistently with generally accepted
12 corporate document principles. But it's simply impossible
13 for Professor Hamermash to (indiscernible) that decision
14 based on his expertise. He admits in his Declaration he
15 doesn't have any of the scientific or regulatory background
16 that one would (indiscernible) or any kind of
17 (indiscernible) finance report (indiscernible). Third,
18 Professor Hamermesh's work is also unreliable because of
19 (indiscernible). As I mentioned, he (indiscernible)
20 available in this case, but all selected by counsel for the
21 Sacklers. He didn't (indiscernible) any documents
22 (indiscernible). As far as we know based on his opinion, he
23 never asked for additional documents and even the 639
24 documents that he had, he admits that (indiscernible), he
25 didn't look at (indiscernible) that one would expect in

1 order for him to put on any kind of (indiscernible) the
2 underlying (indiscernible). And additionally,
3 (indiscernible) today. Professor Hamermesh's opinions
4 simply aren't very helpful to the Court and shouldn't be
5 admitted under 704. His hypothetical case based on a
6 Sackler attorney (indiscernible) statement of facts is sort
7 of (indiscernible) opinion that the rules have said
8 (indiscernible). And finally, Professor Hamermesh's
9 opinions are nothing more than an opinion on the legal issue
10 of reliability and even when he tries to disclaim this, his
11 opinion is (indiscernible). It's very clear at the end of
12 the day, that's what he's doing here and he's making opinion
13 as to the ultimate merits of the pending (indiscernible)
14 litigation that simply has been before the Court and is
15 appropriate to be decided today. And therefore, for those
16 reasons, would ask that you strike his Declaration
17 (indiscernible).

18 THE COURT: Okay. Let me address the last point
19 that you made. As I understand it from the Agreement by the
20 Raymond Sackler Family and the other Sacklers, this
21 document, like all of the documents that are being offered
22 by them, are not being offered for the purpose of persuading
23 the Court to make a finding or conclusion at this hearing on
24 the ultimate merits of any underlying claim against the
25 Sackler families. So, I would understand your last argument

1 very well and probably agree with it, but for that
2 stipulation. But I guess before I ask you a question, Ms.
3 Tonnesen, I'm asking Mr. Joseph. If this Expert Report and
4 the witness's testimony is not being offered for my ultimate
5 determination of the merits of claims against the Sackler
6 Families, what is it being offered for?

7 MR. JOSEPH: Your Honor, (indiscernible) it's
8 relevant to identify for the Court issues that the estate
9 would face in pursuing claims against the Sacklers. He
10 offers three opinions, all dealing with customary norms of
11 corporate governance. The first is --

12 THE COURT: No, I understand the opinions he's
13 offering. So, it's being -- just to go back to your first
14 sentence there. It's being offered so that I can see the
15 types of arguments that would be raised by the Sacklers in
16 connection with any attempt to pursue third-party claims
17 against them as to the --

18 MR. JOSEPH: Your Honor --

19 THE COURT: -- testifying to as far as their roles
20 on the Board and management?

21 MR. JOSEPH: Yes, Your Honor. And more
22 specifically, under the Second Circuit's decision in
23 Bilzerian, ordinary practices are legitimate item of expert
24 testimony so that the defendant's conduct can be weighed
25 against standard accepted practices in the industry. And

1 we're talking about, in the case, to take his first opinion,
2 standard accepted practices of corporate governance in terms
3 of director oversight of the compliance function. And that
4 is relevant to a care mark claim. It's relevant to a
5 question of whether or not there was negligence, whether or
6 not they would give rise to any inference of bad faith. And
7 so, that -- it's relevant to get the industry standards
8 under Bilzerian, so that the Court can evaluate the
9 settlement, whether or not the settlement makes sense. And
10 I'm saying -- first of all, if Your Honor has a question,
11 I'll stop, but I --

12 THE COURT: No, go ahead.

13 MR. JOSEPH: The entire premise of the Motion is
14 wrong. There's nothing wrong with illiciting expert
15 testimony by hypothetical. That's a perfectly proper way to
16 do so. In the (indiscernible) case, specifically allowed an
17 expert in a complicated case to rely on a memorandum
18 prepared by counsel because the case was massively sprawling
19 and I'm sure that it was a tiny fraction of the size of this
20 case because the Court said, there would be no way for the
21 expert to be able to grasp all of the nuances. And if
22 there's a challenge to the foundation, then that's a matter
23 for cross-examination, but it's not a matter for exclusion.
24 The Advisory Committee note General Rule 702 says
25 specifically that disputes of facts are not the basis for

1 exclusion. It's very common in a case to have disputes of
2 fact and those have to be determined by the prior fact
3 before a prior fact to make an assessment. All this is
4 doing, Your Honor, is to provide Your Honor with industry
5 norms, which are relevant to determining whether or not
6 there was a (indiscernible) violation, whether or not the
7 behavior of the shareholders as owners of the company and
8 their conduct was in line with the conduct and demands of
9 other shareholders and whether or not as a result, there is
10 a complete domination or control. And it's relevant to know
11 what the industry standards are on that.

12 THE COURT: Well, let me then turn to another
13 point that Ms. Tonnesen made, which is that Mr. Hamermesh is
14 not really qualified as to the industry that the Debtors are
15 in, i.e, the pharmaceutical industry and therefore, the
16 property industry norm for a board or an officer in that
17 particular industry.

18 MR. JOSEPH: Your Honor, he spent -- I'm sorry,
19 there's an echo. He spent 40 years examining --

20 THE COURT: Someone needs to put their phone on
21 mute so that there's no echo.

22 MR. JOSEPH: He spent more than 40 years both as a
23 partner at Morris Nichols and as a professor, examining
24 industries and he specifically looked at the criteria for
25 pharma boards in connection with his engagement and it's

1 perfectly appropriate for an expert with generalized
2 expertise to focus on a particular industry for a particular
3 engagement. So, he's perfectly qualified. They themselves
4 say (indiscernible) published with distinction. That
5 requires that one focus on particular industries at
6 different points in time.

7 THE COURT: All right.

8 MR. JOSEPH: And to the extent they claim that
9 there is some legal opinions hidden here, it distorts
10 paragraph 10 of this opinion by taking a snippet, which
11 (indiscernible) very clear in that first sentence, is simply
12 a foundational assumption excluded the time period between
13 May 2007 because it wouldn't be pertinent to assessment of
14 liability, which means his opinion would not help the Court
15 because his assumption is, the Court's not going to be
16 looking at liability issues prior to 2007. I'd also say,
17 Your Honor, I don't want to overlook the fact, this Motion
18 is extremely untimely. They took -- they got this report on
19 June 15th, they got his supplemental report on July 12th,
20 they took his deposition on July 15th. Their Motion on Your
21 Honor's rules was due five days before trial. They made it
22 at 10 p.m. on the day before trial, which required
23 (indiscernible) done in advance. We filed our brief at
24 12:30 a.m. today on this issue. So, it should be denied
25 purely as untimely. And I'd also say, Your Honor, at this

1 point, given that Your Honor has determined that you were
2 not interested in dealing with the merits or don't consider
3 it an appropriate (indiscernible) the merits of the
4 underlying opioid litigation, we're offering this opinion
5 specifically in connection with the state claims to help
6 inform the Court's view of the (indiscernible) of the
7 settlement. Maryland hasn't objected to the settlement of
8 the estate claims. Nobody has objected to the settlement of
9 the estate claims. They don't even have a basis for
10 objecting to testimony not being offered on their claims to
11 their objection.

12 THE COURT: Well, I guess that was the last
13 question I had, which is, as I read this report, it does not
14 deal with the aspects of the state -- not estate, the state
15 claims that the states contend are unique to them and that
16 create a different standard for liability than one would
17 have otherwise. Am I right about that? I guess I am
18 because you've just said, this is not offered as even to
19 show the arguments that would be made if one were to
20 consider the merits of claims against the Sacklers if those
21 claims were asserted by a state.

22 MR. JOSEPH: Correct, Your Honor. We heard you
23 loud and clear also, that you're not interested in
24 litigating that, to the extent it could be interpreted any
25 other way. What he talks about are care mark, he talks

1 about alter ego, he talks about facts that are relevant to
2 the unjust enrichment or fiduciary duty claims versus the
3 three opinions that he gives. One can disagree with the
4 opinions, but they're not directed at Maryland or the
5 state's claims.

6 THE COURT: Okay. And by the way --

7 MAN 4: Your Honor, that was my only reason for --

8 THE COURT: It wasn't I that said I wasn't
9 interested in claims that the states would have against the
10 Sacklers. It was that the Debtors had chosen not to
11 evaluate those as part of their showing and therefore, I
12 wasn't interested because of that choice that the Debtors
13 made. So, Ms. Tonnesen, I think there are some legitimate
14 points that Mr. Joseph has made here. I'm not going to
15 focus on the time at this point. I really haven't had the
16 chance to focus on the 1:30 a.m. this morning response, but
17 based on my own review, it appears to me that given the
18 limitations that the Sacklers have placed on this document
19 and that it's really not offered as lawyer argument, but
20 focusing just on corporate norms, it's admissible. And more
21 importantly, it's not being used with respect to the state's
22 claims against the Sacklers. And it appeared that way to me
23 and if it was going to be used, I would have made it quite
24 clear that it doesn't really deal with the state's claims
25 but, in fact, I don't need to do that because the party

1 offering the document has -- as made it crystal clear that
2 it's not going to be used against the states. So, I just --
3 to me, it's marginally helpful and you could certainly
4 cross-examine him on it. Although again, it would be in the
5 capacity as someone looking after the estate's claims, not
6 the states'.

7 MS. TONNESEN: Thank you, Your Honor. We would
8 ask then if counsel for Professor Hamermesh would stipulate
9 as to the authenticity of the deposition of Professor
10 Hamermesh that we took (indiscernible) exhibit at JX-0384 as
11 the deposition and then the (indiscernible) at 0385, 0386
12 and 0387. We think it would save the Court resources and
13 time to simply get the deposition --

14 THE COURT: Let me make sure because if it came
15 through family, what you're asking is that you would like to
16 have those deposition --

17 MS. TONNESEN: (indiscernible)

18 THE COURT: -- included in the record in lieu of
19 your cross-examination.

20 MS. TONNESEN: Yes, it's already in the Joint
21 Exhibit book. I believe we're the only party that objected
22 to the deposition and we would obviously withdraw that
23 objection if Mr. Joseph would just stipulate that that's an
24 authentic copy of the deposition to allow it to be entered
25 into the record.

1 THE COURT: All right.

2 MR. JOSEPH: Of course, Your Honor. As long as
3 it's the entire deposition. It's complete under 106 and
4 it's authentic and we have no objection.

5 THE COURT: Okay. All right. Mr. Fogelman, I
6 think you're on mute.

7 MR. FOGELMAN: I apologize, Your Honor. This is
8 Larry Fogelman from the (indiscernible). May I be heard?

9 THE COURT: Sure.

10 MR. FOGELMAN: Thank you, Your Honor. Your Honor,
11 just briefly, we understand that Purdue is not -- in light
12 of the presentation of this case and chief, it's not taking
13 issue with questions regarding how the former directors
14 acted in running Purdue. However, Your Honor, it is very
15 possible that this Plan may not be confirmed, and the
16 Declaration contains not just legal analysis, but
17 conclusions. For example, paragraph 52, that the conduct of
18 the former directors during the relevant period did not
19 amount to personal direct participation in any wrongdoing by
20 Purdue. And my understanding is that the Debtors do contest
21 that and should there be need for further proceedings if
22 this Plan is not confirmed, that may include estate claims
23 being brought against the Sacklers to bring more money into
24 the estate for its benefit. And I know there was some
25 stipulation referenced this morning about how it wouldn't

1 prejudice future cases or future -- if there's a need for
2 further proceedings in this case (indiscernible) specific
3 parties, but to the extent that the United States isn't part
4 of general unsecured creditor in the case, we just want to
5 make sure that any part, by not contesting or cross-
6 examining the witnesses on these points and also on
7 subsequent witness testimony by the Sacklers, isn't
8 conceding. And again, this is not part of the Debtors' case
9 issues.

10 THE COURT: Right. That's my understanding, Mr.
11 Fogelman. Again, this is not being offered for the Court to
12 make a determination on the merits of any claims that the
13 estate would have against anyone. It's being offered as
14 expert testimony as to arguments, which I assume would be
15 made in such a litigation. But I'm not going to rule on the
16 merits, so I can't imagine how it would estop anyone since
17 there wouldn't be a decision. But I also understood that
18 the agreement that was referenced at the start of the
19 hearing applies not just to specific parties, but to
20 everyone on these points so that they don't have to worry
21 about such estoppel.

22 MS. TONNESEN: Your Honor, could I clarify one
23 point. I apologize for interrupting you. Maryland isn't a
24 party to that stipulation, so to the extent that's relevant
25 to our --

1 THE COURT: No, but -- it's not -- I've clarified
2 by Mr. Joseph. It's not being offered to determine the
3 liability of the Sacklers, right? It's being offered to
4 show what the Sacklers would argue on this point. And
5 you're free to let me know -- you haven't hesitated to let
6 me know what your client would argue to the contrary. In
7 fact, I have that. The one difference is that this is
8 expert testimony as opposed to a legal brief. But I think,
9 given the nature of the testimony, which is a somewhat
10 esoteric deal, although not scientifically esoteric. It's
11 worth having, for what it's worth. I do rule on issues of
12 corporate governance and ultimately, I'm guided by what I
13 know, and parties are free to brief those issues to me, as
14 they have, and states, in fact, have basically said this is
15 largely irrelevant to their claims in any event. So, again,
16 it's -- I appreciate that this is testimony rather than
17 legal argument, but it is not fact testimony. I'm not
18 taking the facts, the hypotheticals, certainly as true. I'm
19 not taking any of those assertions as true, it's a
20 hypothetical and it just helps me to guide what arguments
21 might be made in respect of estate claims like veil piercing
22 and breach of fiduciary duty. And frankly, having just
23 dealt with two monster litigations that include breach of
24 fiduciary duty claims, I think I'm up on those already, but
25 it doesn't hurt to hear from Mr. Hamermesh on that, as well,

1 as far as I'm concerned.

2 MS. TONNESEN: May I just ask one clarifying
3 question? Are the underlying documents coming in
4 (indiscernible) 639 exhibits -- I'm sorry, not exhibits,
5 documents --

6 THE COURT: They're only in to the extent they're
7 in because the parties have agreed to their admissibility.
8 This doesn't back door their entrance into the case.

9 MS. TONNESEN: Thank you.

10 THE COURT: Okay. So, Mr. Fogelman, I don't know,
11 did that satisfy you in responding to your point?

12 MR. FOGELMAN: Yes, Your Honor. You've made clear
13 no parties absolved by any facts (indiscernible) Declaration
14 and parties are free to argue this point if there's a
15 subsequent hearing in this proceeding. Thank you, Your
16 Honor.

17 THE COURT: Well, and you're free to argue them
18 anytime, including if there's a subsequent proceeding.
19 Okay. All right, so I think we --

20 MR. FOGELMAN: Thank you, Your Honor.

21 THE COURT: -- with those clarifications, I'll
22 overrule the remainder of the Motion in Limine because I
23 think the clarifications resolved the grounds upon which I
24 might have granted them. So, can we get Mr. Hamermesh back
25 on the call?

1 MAN 3: We have that in process, Your Honor.

2 THE COURT: Okay. Okay, yes. I see Professor
3 Hamermesh. Would you raise your right hand please?

4 MR. HAMERMESH: Sure.

5 THE COURT: Do you swear or affirm to tell the
6 truth, the whole truth and nothing but the truth, so help
7 you God?

8 MR. HAMERMESH: I do.

9 THE COURT: Okay. Mr. Hamermesh, you submitted a
10 Declaration dated August 4, 2021, that's consistent with my
11 Order establishing the ground rules for this hearing. It's
12 intended to be your direct testimony and it attaches an
13 Expert Report corrected as of July 12, 2021. Knowing that
14 this would be your direct testimony today, on August 13th,
15 is there anything in it that you would wish to change?

16 MR. HAMERMESH: No, Your Honor.

17 THE COURT: Okay. All right. And I think we've
18 already addressed the objection to this, which I've
19 overruled with clarifications that I've set out on the
20 record, but I don't think are particularly relevant to your
21 testimony. Just the parties understand in what way your
22 testimony is to be used and in what ways it will not be
23 used, including in the future. So, let me just confirm.
24 Does anyone have any remaining objection to the admission of
25 Mr. Hamermesh's Expert Report attached to his Declaration?

1 Okay. It's admitted, again, on the basis of my ruling on
2 the record before I swore Mr. Hamermesh in. Does anyone
3 want to cross-examine the witness?

4 MR. EDMUNDS: Your Honor, Brian Edmunds. Just to
5 confirm (indiscernible)

6 THE COURT: Oh yes. Yes, the deposition -- some
7 people may not have heard you. I think I kind of read your
8 lips, that was how I could hear you. You're asking whether
9 the agreement by Mr. Joseph that the accuracy of the
10 deposition transcript that Maryland would offer up in lieu
11 of its cross-examination of Professor Hamermesh is agreed
12 and that it could be used in connection, in lieu of cross?
13 And I think Mr. Joseph confirmed that, but that's right,
14 right Mr. Joseph?

15 MR. JOSEPH: Absolutely, Your Honor.

16 THE COURT: Okay.

17 MR. JOSEPH: Thank you, Your Honor.

18 THE COURT: All right. So, does anyone want to
19 cross-examine Mr. Hamermesh? Okay. I have reviewed this
20 Declaration and I don't have any questions on it. I think
21 it's clear and self-explanatory, along with clarifications
22 or stipulations that were made in connection with the Motion
23 in Limine. So, hearing no-one, Mr. Hamermesh, after all of
24 that, you can be excused.

25 MR. HAMERMESH: Thank you very much, Your Honor.

1 THE COURT: Mr. Huebner, did you have a question?

2 MR. HUEBNER: Yes. Your Honor, just one very
3 small (indiscernible) before he steps down. There are
4 actually certain emails flying around (indiscernible) Your
5 Honor's ruling could not have been more clear. So, let me
6 just clarify. No (indiscernible) is prejudiced by the types
7 of testimony being put on (indiscernible). Many of us
8 disagree strongly (indiscernible), we don't have to disagree
9 now (indiscernible) statement of another party. I think
10 Your Honor is being very clear (indiscernible) since this
11 hearing started, so it is clear, I just want there to be no
12 doubt that (indiscernible) examination (indiscernible) on
13 the stipulation that there is no confirmation for the
14 Sacklers' breach. We will be sitting there for a year, for
15 decades (indiscernible) this hearing cannot be used against
16 us.

17 THE COURT: Again, I thought I was clear on that.
18 As is often the case, in fact, almost always the case when a
19 debtor or other party moves for approval of the settlement
20 agreement, and of course, this is a multiple faceted
21 settlement agreement, in bankruptcy court, they will let the
22 Court know what the legal issues are and some sense of the
23 risks and reward of continued litigation instead of
24 resolving those legal issues. But it's only to inform the
25 Court of those issues, not the ultimate merits, to be

1 decided by the Court. That's the whole point of the
2 settlement. If you don't decide the ultimate merits and it
3 is crystal clear that if I don't confirm the Plan or if
4 there is a breach under the Plan of the Sacklers'
5 obligations if I do confirm the Plan and litigation ensues,
6 that there's no estoppel and no prejudice in such ensuing
7 litigation based on anyone's not contesting or cross-
8 examining Mr. Hamermesh or any other witness offered by the
9 Sacklers. Again, the sole purpose of which is to show some
10 side of the arguments that they would be making if there
11 were litigation, but not for that litigation. And there's a
12 big difference for collateral estoppel purposes.

13 MR. HUEBNER: Thank you, Your Honor. I apologize.

14 CLERK: The next witness has come on the screen.
15 Would you like to (indiscernible)?

16 THE COURT: I think we're -- again, you can sign
17 off now Mr. Hamermesh.

18 MR. HAMERMESH: Thanks very much, Your Honor.

19 MR. HUEBNER: Your Honor, I'll go back. I'm just
20 at a crossroads for many parties' concerns --

21 THE COURT: No, that's fine. I understand.

22 MR. HUEBNER: (indiscernible)

23 THE COURT: All right. So yes, we should go to
24 the next witness, and I see her on the screen. Ms.
25 Chakraborty. I hope I'm pronouncing that correctly.

1 THE WITNESS: Yes.

2 THE COURT: Okay. So would you raise your right
3 hand, please? Do you swear or affirm to tell the truth, the
4 whole truth, and nothing but the truth so helps you God?

5 THE WITNESS: I do.

6 THE COURT: Okay. And it's Maureen, M-A-U-R-E-E-
7 N?

8 THE WITNESS: Correct.

9 THE COURT: Chakraborty? C-H-A-K-R-A-B-O-R-T-Y?

10 THE WITNESS: Correct.

11 THE COURT: Okay. Ms. Chakraborty, you submitted
12 a declaration in this matter dated August 4, 2021 under my
13 order establishing procedures for this hearing. It -- and
14 the expert report dated June 15, 2021 that's attached to it,
15 corrected as of July 26, 2021, is intended to be your direct
16 testimony in this matter.

17 Knowing that and sitting here now on August 13th,
18 is there anything in your corrected expert report of July
19 26, 2021 or your declaration that you wish to change?

20 THE WITNESS: No.

21 THE COURT: Okay. Does anyone object to the
22 admission of Ms. Chakraborty's declaration and attached
23 expert report?

24 Okay.

25 MR. ROBINSON O'NEILL: Your Honor, this is Tad

1 Robinson O'Neill, state of Washington. I don't object. I
2 just -- I want to say ditto to the extended colloquy from
3 the last witness to this witness.

4 THE COURT: Okay. No. I want to be clear. What
5 we said with regard to there being no estoppel or other
6 adverse consequences in any future dispute, when I was
7 addressing Mr. Hamermesh's testimony, the same goes for all
8 of the witnesses called by the Sacklers, including Ms.
9 Chakraborty.

10 MR. ROBINSON O'NEILL: Yep. And I think also that
11 Mr. Joseph is offering and not -- with the stipulation that
12 we had agreed.

13 THE COURT: Correct. That goes again for all of
14 the Sackler witnesses.

15 MR. JOSEPH: Correct, Your Honor.

16 THE COURT: Okay. All right. So hearing no one,
17 I will admit Ms. Chakraborty's expert report as her direct
18 testimony.

19 (Declaration of Maureen Chakraborty Entered Into
20 Evidence)

21 Does anyone -- and of course, subsumed within
22 that, excuse me, is her qualification as an expert with
23 respect to the matters covered by the report with regard to
24 a retroactive solvency -- and I'm using the term solvency
25 broadly here -- retroactively solvency analysis that she

1 conducts or sets forth in her expert report.

2 So does anyone want to cross-examine Ms.
3 Chakraborty?

4 Okay. I've reviewed the report. Again, I'm not
5 reviewing it other than in the context of reviewing
6 arguments that would be made in the underlying litigation if
7 that were to ensure, not as to the validity of those
8 arguments. And given that, I don't have any questions
9 either.

10 So again, I'm going to give people one last
11 chance, but if they don't have any cross, and I don't hear
12 anyone, Ms. Chakraborty, you can be excused.

13 THE WITNESS: Okay. Thank you very much.

14 THE COURT: Thank you.

15 MR. JOSEPH: Thank you.

16 THE COURT: I have down as the next witness then
17 Garrett Lynam. Excuse me.

18 MR. JOSEPH: Yes, Your Honor, and he's in the
19 process, I'm advised, of signing on.

20 THE COURT: Okay.

21 MR. JOSEPH: Here he is, Your Honor.

22 THE COURT: All right. Would you raise your right
23 hand, please? Do you swear or affirm to tell the truth, the
24 whole truth, and nothing but the truth so help you God?

25 THE WITNESS: Yes.

1 THE COURT: And it's G-A-R-R-E-T-T, new word, L-Y-
2 N-A-M?

3 THE WITNESS: Yes. Correct.

4 THE COURT: Mr. Lynam, you submitted a declaration
5 in this matter. It's dated August 2, 2021, under my order
6 governing the procedures for this hearing. It's intended to
7 be your direct testimony on -- at the hearing.

8 Knowing that and sitting here today, August 13, is
9 there anything in it that you wish to change?

10 THE WITNESS: No.

11 THE COURT: Okay. Does anyone object to the
12 admission of Mr. Lyman's declaration as his direct
13 testimony?

14 Okay. Does anyone want to cross examine Mr.
15 Lynam?

16 MR. GOLD: Yes, Your Honor. Matthew Gold from
17 Kleinberg, Kaplan, Wolff & Cohen for Washington, Oregon, and
18 the District of Columbia. May I proceed?

19 THE COURT: Yes.

20 MR. GOLD: Your Honor, before I actually begin my
21 cross examination, I would -- I think it would be helpful to
22 be clear. The court provided guidance earlier that parties
23 and their corporate representatives are being permitted to
24 listen to proceedings, and I would appreciate -- I think it
25 would be helpful to have clarity from counsel to the

1 Sacklers regarding whether they are contending that that
2 exception applies to certain particular witnesses which I
3 will now name.

4 The first is Mr. Ives, who is scheduled to testify
5 next, and the second are two Side A witnesses, Saunders and
6 White, who I believe may be testifying on Monday. But all
7 three -- all four of them are covering similar ground.

8 MR. JOSEPH: It is not our position that either
9 Mr. Lynam or Mr. Ives is a corporate representative.
10 However, as we advised the Court yesterday -- because no
11 party had invoked Rule 615 -- Mr. Lynam did listen to
12 yesterday's testimony. I believe Mr. Ives listed about half
13 an hour or so, maybe less, of yesterday's testimony. But
14 they stopped immediately when the Rule 615 issue was raised
15 at about 5:20 last night.

16 MS. MONAGHAN: And on -- this is Maura Monaghan
17 from Debevoise & Plimpton LLP on behalf of the Mortimer-
18 Sackler family. No Mortimer Sackler witness has listened to
19 or will be listening to the testimony of other witnesses,
20 including Mr. White and Ms. Saunders.

21 THE COURT: Okay.

22 MR. JOSEPH: I would ask -- I would ask the Court
23 for clarification. After a witness has testified --

24 THE COURT: Oh, then there's no problem.

25 MR. JOSEPH: -- it's customary --

1 THE COURT: With one exception. There've been a
2 couple witnesses who might have to come back, depending on
3 whether parties that might have testimony have resolved
4 their underlying issue, so they cannot listen after the --
5 after they've testified, until that's clarified that they
6 won't -- there's no chance that they'd be coming back to
7 testify.

8 But if someone's testimony is complete and they're
9 not going to testify anymore, then they can listen. Sure.

10 MR. JOSEPH: Thank you, Your Honor.

11 THE COURT: Okay.

12 MR. GOLD: Thank you, Your Honor. Thank you,
13 Counsel.

14 THE COURT: All right. So do you want to go
15 ahead, Mr. Gold?

16 MR. GOLD: Yes, please, Your Honor.

17 CROSS EXAMINATION OF GARRETT LYNAM

18 BY MR. GOLD:

19 Q Mr. Lynam, can you hear me clearly?

20 A Yes, I can.

21 Q Okay. Thank you. Would you please turn to Page 3,
22 Paragraph 7 of your declaration?

23 A Yes, I'm here.

24 Q Thank you. You refer there to certain releases. Do
25 you see that?

1 A Mr. Gold, I'm sorry. I didn't hear what you said.

2 Could you repeat what you said?

3 Q Certainly. You refer in that Paragraph 7 to certain
4 releases. I just want to make sure that you're focused on
5 what I'm to ask you about, and --

6 A Yes.

7 Q -- you're referencing those releases.

8 A Correct.

9 Q Okay. Did you make an assessment regarding the
10 strength of the claims that those releases would release?

11 A So I've been advised by Counsel to the B side about --

12 MR. JOSEPH: Objection. Don't disclose privileged
13 information.

14 THE WITNESS: Of course.

15 THE COURT: Okay. So the question was did you
16 make an assessment of the strength of the underlying claims
17 that are being released. I think that was the question.
18 Right, Mr. Gold?

19 MR. GOLD: That is correct, Your Honor.

20 THE COURT: All right. So you should respond only
21 to the extent that you're not disclosing privileged
22 information, either attorney work product or attorney-client
23 communications.

24 THE WITNESS: So I think the answer would be yes,
25 I have made an assessment.

1 BY MR. GOLD:

2 Q Thank you. The -- did that reference evidence your
3 assessment that such claims are weak or meritless?

4 A Could you repeat the question, Mr. Gold?

5 Q Did that reference evidence your assessment that such
6 claims are weak or meritless?

7 A I apologize. I don't know what reference is referring
8 to.

9 Q Sorry. The reference to claims being released and to
10 Mr. Lynam's subsequent statement that he evaluated such
11 claims.

12 THE COURT: Is there -- I think what Mr. Joseph is
13 saying is, is there a paragraph in his declaration where he
14 states that claims being released are weak or meritless?

15 MR. GOLD: No, I'm asking him now whether he made
16 that determination.

17 THE COURT: Oh.

18 MR. JOSEPH: I'm going to object to going beyond
19 the scope of the direct examination. He's not here to
20 provide expert testimony. He is a lawyer, and he's not here
21 to provide expert testimony as a lawyer.

22 THE COURT: I think -- I think that's correct. I
23 think the declaration goes to only the statement that --
24 well, it's summarized in Paragraph 10 -- that the Side B
25 family and Side B shareholder payment parties, he would not

1 recommend entering into the settlement under the plan unless
2 they received the releases of the related parties under the
3 plan.

4 Now, you can ask him why he reached that
5 conclusion, but I think you can't ask him out of the blue
6 how he evaluated the claims.

7 MR. GOLD: Your Honor, if I may, I will withdraw -
8 - I think my question can be clarified with reference to
9 another statement in his declaration that I believe will
10 show that his statement -- his declaration goes a bit beyond
11 Your Honor's summary, so maybe I can proceed with that, and
12 then we'll return to the question.

13 THE COURT: Okay.

14 BY MR. GOLD:

15 Q Okay. Mr. Lynam, will you refer to or look at Page 4,
16 Paragraph 8 of your declaration?

17 A Yes.

18 Q And I'm going to read a section, and I will ask that
19 anyone note if I am reading it incorrectly. It says,
20 "History has shown that Plaintiffs will pursue individuals
21 in litigation related to the Debtors even if the individual
22 has title or no connection to the Debtors." Do you see the
23 part I just read from?

24 A Yes, I do.

25 Q Okay. Now, when you referred to an individual having

1 little or no connection to the Debtors, was that statement
2 meant to be a shorthand for indicating that the claims
3 against such individuals would be weak?

4 A No. It's intended -- it's intended to reflect the fact
5 that people who have little or no connection to the Debtors,
6 to Purdue Pharma U.S., are called in to this litigation, and
7 I give examples in the next few sentences.

8 Q I understand, but what is the relevance of their
9 connection to the Debtors with respect to your declaration?

10 A The relevance is that these are individuals who have
11 little or no connection with the Debtors, yet they were
12 still subjected to very extensive discovery.

13 Q I understand, but are you -- if they had little or no
14 connection to the Debtors and yet there were strong claims
15 that could be asserted against them, would it not make sense
16 that they would be subjected to discovery or actions?

17 MR. JOSEPH: Objection. It's a hypothetical.
18 It's an inappropriate question. His statements are very
19 factual as to why the releases need to be as they are.

20 MR. GOLD: Your Honor, I disagree. He could
21 recite that the parties had brown hair, and that might be
22 very factual, but we would be wondering why he thought it
23 was relevant to mention that they had brown hair. I am
24 asking in this context --

25 THE COURT: I take the statement to mean that Mr.

1 Lynam is justifying the grant of a release even to people
2 that have a remote connection to the Debtors to respond to
3 the argument why would someone who has a remote connection
4 to the Debtors need a release.

5 And I think normally, if someone's -- he's
6 equating remote connection to the Debtors as being a
7 bystander, like for example, a grandchild, you know, a
8 minor. And his declaration goes to why even that person
9 would -- there would be an insistence that they get a
10 release.

11 But again, the declaration goes to the basic
12 question, which is why is the release so broad, not to the
13 merits of the claims that are being released.

14 MR. GOLD: Understood, Your Honor.

15 THE COURT: So again, you can ask him why, you
16 know, they -- why someone would be included in the release.

17 MR. GOLD: Thank you, Your Honor. I will move on.

18 THE COURT: But I don't think -- put it
19 differently. I don't think this is -- this declaration is
20 being offered to try to convince me that because it's
21 unlikely someone should get sued, it doesn't matter whether
22 they get a release or not. I don't think that's why it's
23 being offered.

24 I think it's being offered to show why people that
25 one would normally think might not be entitled to a release,

1 the Sacklers still think that they should get a release.
2 It's not evaluating the claims. It's trying to explain why
3 the release is as broad as it is.

4 And you can certainly ask questions about that
5 because I think that's what the declaration is all about.
6 Why is it so broad?

7 MR. GOLD: I understand, Your Honor, and I am
8 trying -- and I think you will see, hopefully successfully -
9 - to tailor my questions to what's within the declaration.

10 THE COURT: Okay.

11 BY MR. GOLD:

12 Q Mr. Lynam, would you please turn to Page 3, Paragraph 6
13 of your declaration?

14 A Yes. I'm here.

15 Q And I'm going to again read the portion here and ask
16 you just to indicate that you see what I'm reading and that
17 it is correct. It says, "In my capacity as an executor,
18 officer, or advisor to the Side B shareholder payment
19 parties discussed above, I have authority over or meaningful
20 input into the material decisions of these entities and
21 trusts, including whether to enter the shareholder's
22 settlement agreement and contribute to payment of the
23 shareholder settlement (indiscernible)."

24 A Yes.

25 Q Thank you. Of the entities that you referred to

1 earlier in your declaration -- if anyone's confused, I will
2 specify them if that's necessary, but I'm trying to save
3 some time here. Of those entities, could you please
4 indicate which are the ones you have authority over and
5 which are the ones that you instead have meaningful input
6 into decision making of?

7 A Yes. So I have authority over the estate of John
8 Sackler. I am the sole executor. I also have authority
9 over Temagami LLC. I am the sole manager of Temagami.
10 Authority in my view means that I have the ability to make
11 the decision. I don't need to consult with any else. It's
12 my decision.

13 For the various trusts that are listed in Paragraph 3,
14 A through J -- excluding Temagami, which I just mentioned,
15 which is not a trust -- I'm a vice president of an entity
16 called Cornice Fiduciary Management LLC. That is the
17 trustee of all of those trusts. There are other individuals
18 who serve as vice president as well, and we collectively
19 make decisions to effectuate actions of the trustee, so I
20 have meaningful input into the decisions of that entity.

21 In addition, in Paragraph 5, I list entities which I am
22 not an officer of, but I do work with them on a regular
23 basis, and I advise them through my role as general counsel
24 of Kokino LLC.

25 I also advise the trust that's listed in Item H, for

1 Henry, in Section 5. I'm not a trustee of that entity. I'm
2 not an officer of the trustee, but I serve on committees for
3 administering that trustee, and I also (indiscernible).

4 Q Thank you. So just so I understand, the only two that
5 you have authority over is the first two you mentioned, and
6 the rest fall in the category of meaningful input.

7 A Correct.

8 Q Is that correct? Thank you.

9 The -- and again, I think you stated this. I hope --
10 this is just a clarification -- that by meaningful
11 authority, you mean that someone other than solely you are
12 the decision maker; is that correct?

13 A That would be correct. Yes.

14 Q Thank you. Now, in the instances where you have
15 authority, does that mean that you are acting in a fiduciary
16 capacity in those instances? Do I understand you correctly?

17 A That is correct. Yes. I act as a fiduciary.

18 Q Okay. And for whom do you -- who are the beneficiaries
19 of that fiduciary capacity?

20 A So it depends on the role. As executor, I have a
21 fiduciary duty to maximize the size of the estate because
22 that estate is still pending. It has not been wrapped up.
23 It has not been distributing assets. I have a fiduciary to
24 preserve it, fiduciary duty to preserve it.

25 For Temagami, I have a fiduciary duty to its owner,

1 which is a trust, so I act as a fiduciary for its owner.

2 Q Can you tell me who generally are the ultimate
3 beneficiaries in either case or both cases?

4 A Yes. In general, the ultimate beneficiaries are
5 members of Jonathan Sackler's family.

6 Q Do the -- are you permitted to consult with the
7 beneficiaries in connection with making your determinations
8 in these regards?

9 A Yes.

10 Q Do the beneficiaries include the Side B former
11 directors, which is a defined term you've used? If you need
12 clarification, I can point you to it, but I'm hoping not.

13 A So it depends on the trust in question. Jonathan
14 Sackler's family is the family of Jonathan Sackler with a
15 Side B former director, but Jonathan Sackler passed away in
16 2020. None of his remaining family ever served -- was ever
17 a Board member of Purdue Pharma, his immediate family. But
18 other trusts, such as the trust in Item 5, Number H, some of
19 the beneficiaries are members of Richard Sackler's family.
20 And some of those family members were also directors, and
21 they are still living.

22 MR. GOLD: Okay. Thank you. I have no further
23 questions.

24 THE COURT: Okay. Does anyone else have any
25 questions for Mr. Lynam? No.

1 I have a question or two for you, Mr. Lynam. Do
2 you have handy the term related parties?

3 THE WITNESS: Yes.

4 THE COURT: And do you have handy the shareholder
5 release provision of the plan? I think it's 1027.

6 THE WITNESS: Your Honor, I do not have that
7 handy. I have related parties as defined in my declaration.

8 THE COURT: Okay.

9 THE WITNESS: Is that what you're referencing?

10 THE COURT: That's fine. Let me make -- let me
11 turn to one other definition, which is the definition of the
12 shareholder released parties. Do you have that handy?

13 THE WITNESS: I do not have it in front of me,
14 Your Honor. (Indiscernible) have it handy.

15 THE COURT: Okay. All right. I guess my question
16 goes primarily to the aspect of related parties that
17 includes independent contractors, subcontractors, agents,
18 and consultants, and separately, affiliates. So let me deal
19 with the first group first -- not the affiliates but the
20 other group.

21 Are you aware that McKinsey did work for Purdue
22 for which it has entered into a settlement with certain
23 state attorney's general?

24 THE WITNESS: Yes. I am aware of that.

25 THE COURT: Okay. Would the shareholder release,

1 using this language, cover McKinsey?

2 THE WITNESS: Your Honor, to the extent that
3 McKinsey would have been an agent of the Debtor's and it's a
4 civil claim, my understanding is that it possibly could be
5 covered.

6 THE COURT: As part of the shareholder release?
7 I'm just focusing on your declaration, which says that the
8 Side B shareholder parties and the shareholder payment
9 parties wouldn't enter into the Sackler settlement with a
10 plan release. And I'm -- and in saying that, do you
11 consider a company like McKinsey that acted as an advisor or
12 constant?

13 THE WITNESS: Your Honor, I consider the
14 definition to be very broad because it's reflecting the
15 purpose of what it's trying to get at, which is global
16 peace. So through that prism, the way I analyze it, I do
17 think an advisor like McKinsey may be picked up. I do not
18 have the language in front of me, though, so I'm just
19 telling you my interpretation of how I view the scope of
20 this language.

21 MR. JOSEPH: Your Honor, McKinsey is an excluded
22 party, so --

23 THE COURT: I understand McKinsey, but I'm saying
24 if there was someone -- some company like McKinsey that had
25 engaged in what McKinsey has now revealed to have -- I guess

1 for the reason why it's excluded. Unless it's an excluded
2 party, would it be covered?

3 THE WITNESS: Your Honor, are you directing the
4 question to me or --

5 THE COURT: Yes. Yes. Yeah. I'm sorry.

6 THE WITNESS: Yes. Okay. Sorry. Yes. Yes.
7 Again, the breadth of this release is a function of its
8 purpose, which is to achieve global peace, so I would expect
9 McKinsey to be covered if it's not excluded explicitly.

10 THE COURT: And why would -- and I appreciate
11 McKinsey itself is excluded, but let's assume for the moment
12 that a company that didn't -- that engaged in the assignment
13 that it did for Purdue that was not excluded, why would it
14 be necessary for global peace that it be covered by the
15 release?

16 THE WITNESS: Your Honor, the nature of this
17 litigation is such that global peace, in my view as a
18 fiduciary for Jonathan Sackler's family, is the only way to
19 have people move on with their lives. A pending lawsuit
20 against any party runs the risk of, in my view, pulling Jon
21 Sackler's family back into litigation, or if not the family
22 members themselves, possibly the trusts.

23 THE COURT: Well, can I explore that? The --
24 maybe I shouldn't be using the word McKinsey. Maybe let's
25 just call it M Co. or X Co.

1 X Co. isn't contributing to the settlement, right?

2 No consultant or subcontractor is paying under the
3 settlement, correct?

4 THE WITNESS: Correct. Correct.

5 THE COURT: And so is it the case that the only
6 way that those who are paying into the settlement would be
7 dragged into litigation against X Co., that they would have
8 to provide discovery or be deposed?

9 THE WITNESS: Your Honor, could you rephrase the
10 last part of your question?

11 THE COURT: Sure.

12 THE WITNESS: I do not understand it.

13 THE COURT: I took it from your answer --

14 THE WITNESS: Yes.

15 THE COURT: -- to my prior question that the
16 people who are putting up the money, either directly or
17 through their companies, their equity in this case. Don't -
18 -

19 THE WITNESS: But could you rephrase the question
20 -- I'm sorry. Go ahead.

21 THE COURT: Don't want to have a risk that a
22 consultant like X Co. be subject to a Purdue-related
23 litigation, and I took it from your answer that it's because
24 they don't want to be dragged into that litigation, that the
25 people who are paying don't want to be dragged into the

1 litigation, but I'm asking you how would they be dragged in
2 other than as a witness or someone providing discovery?

3 THE WITNESS: Your Honor, I'm not sure they would
4 be dragged in other than as a witness or providing
5 discovery. But --

6 THE COURT: Okay.

7 THE WITNESS: Yeah.

8 THE COURT: All right.

9 THE WITNESS: I think that answers the question.

10 THE COURT: Okay. And let me turn then to the
11 other aspect that I focused on here, which is affiliates.
12 Do affiliates cover any company that the shareholder release
13 parties have more than a 20 percent interest in?

14 THE WITNESS: So Your Honor, I don't have the
15 definition of affiliates as that term is used in the plan in
16 front of me. It can be a simple term.

17 THE COURT: It's not a defined term as far as I
18 can tell. It's a lowercase affiliates.

19 THE WITNESS: Okay. So then I would interpret
20 affiliates to be defined by the concept of control, so any
21 entity that's under the control of the shareholder release
22 parties, such as the trust fund, the benefit of the Sackler
23 family. We get the benefit of the release as well.

24 THE COURT: Okay. And does that apply not only to
25 affiliates that would be either directly or indirectly

1 contributing to the settlement but to other affiliates as
2 well?

3 THE WITNESS: Yes. It would cover all affiliates.

4 THE COURT: Okay. And the rationale for that is
5 what?

6 THE WITNESS: So from my experience working with
7 the Jonathan Sackler family, there are many, many entities
8 in the structure for the trusts and for the investments that
9 they own.

10 If we did not include affiliates, we only included
11 the owners within the scope of the release, I would be
12 concerned that there would be a loophole, so to speak, in
13 the release where underlying entities that are affiliates
14 that have value, sometimes significant value, would still be
15 subject to lawsuits.

16 THE COURT: Related to Purdue?

17 THE WITNESS: Yes because if they're excluded from
18 the release, I would expect that they could be subject to
19 lawsuits related to Purdue, even if they have little or no
20 connection to Purdue.

21 THE COURT: What if they actually did have
22 connection to Purdue and were not contributing to the
23 settlement?

24 THE WITNESS: Your Honor, I think the entities
25 that -- I'll give you an example of an entity that I

1 immediately recognize needs the definition you're
2 describing.

3 It would be like some of the independent
4 associated companies, some of the non-U.S. businesses.
5 Those are affiliates of the Sackler family, so to speak,
6 generally speaking. They are being sold in connection with
7 this settlement, and the proceeds are being paid to fund the
8 \$4.325 billion cash (indiscernible).

9 THE COURT: No, I -- my question when to
10 affiliates that were not contributing, whose assets were not
11 being contributed.

12 THE WITNESS: Your Honor, again, I think that any
13 entity that's left out there that is an affiliate of the
14 Sackler family, even if it had no connection to Purdue, I
15 would be concerned as a fiduciary that that entity would be
16 sued. And it's not necessarily the merit of the case. It's
17 just the volume of the lawsuits.

18 THE COURT: Okay. Let me go on this point, and
19 I'm going to have to read this to you, I think, because I
20 don't think you have it in front of you. There's no reason
21 you would because it's not referenced in your declaration.
22 But the section of the plan which starts at Page 122, it's
23 headed "releases by releasing parties."

24 So I guess I wanted to focus on a couple of
25 aspects of this. One aspect of the release, it's Subheading

1 8 -- (indiscernible) 8 -- is release of any past, present,
2 or future use or misuse of any opioid. And I -- if an
3 affiliated company sells an opioid in the future, is this
4 intended to cover that company where there's a claim against
5 it?

6 THE WITNESS: Your Honor, I'm not sure. But if
7 the settlement is consummated, there is actually a covenant
8 and settlement agreement saying that certain members of the
9 Sackler family and trust for their benefit cannot be --

10 THE COURT: I understand. I understand, but I'm
11 talking about affiliates, and I just want to make sure. I'm
12 not sure the answer to this question, and maybe you're not
13 the right one to ask it because I think it may be more
14 appropriate to ask the people who drafted this.

15 But I think I can pose this question to you. If
16 an affiliate run by someone else -- not run by the Sacklers
17 -- is selling opium -- opioids, the Sacklers are out of it,
18 so they don't have the ability to control it, so it would
19 have to be another definition of affiliate, like 20 percent
20 owner. And it sells opioids and has a liability for that in
21 the future, of future sales, why would the Sacklers want to
22 be shielded -- have it be shielded from liability?

23 THE WITNESS: Your Honor, again, I don't have the
24 language in front of me. I'm not actually sure what it is
25 that you are referencing, but I would think that these

1 claims stem from conduct of Purdue Pharma U.S.

2 THE COURT: Okay. Which is really tied to more
3 past liability or --

4 THE WITNESS: Correct.

5 THE COURT: -- sort of spillover liability.

6 THE WITNESS: Correct.

7 THE COURT: Okay. It is not clear to me from your
8 declaration whether Purdue Canada is on Side A or Side B, or
9 is it both?

10 THE WITNESS: It is on both.

11 THE COURT: Okay. So I approved a settlement
12 earlier this week where the Sacklers agreed in return for
13 the release of claims against the estate -- significant
14 claims -- to carve out from the release the Canadian
15 provinces.

16 THE WITNESS: Correct. Well, my understanding of
17 that stipulation, Your Honor, is that Canadian provinces
18 withdrew their proofs of claim. And in exchange for that,
19 there was an acknowledgement that the release contemplated
20 by this Chapter 11 plan does not extend to claims brought by
21 non-U.S. persons in non-U.S. jurisdictions --

22 THE COURT: Right.

23 THE WITNESS: -- stemming from non-U.S. conduct.

24 THE COURT: Right. Foreign conduct. Canadian
25 conduct.

1 THE WITNESS: Right.

2 THE COURT: Right.

3 THE WITNESS: Correct. Yes.

4 THE COURT: But it's limited to those provinces,
5 correct?

6 THE WITNESS: That is my understanding, Your
7 Honor. Correct.

8 THE COURT: That agreement wouldn't extend, for
9 example, to Mr. Underwood's clients, the handful of non-
10 provincial government -- any of these in Indian -- First
11 Nation peoples that he represents.

12 THE WITNESS: Your Honor, I'm not sure. I'm not
13 familiar how provinces bind municipalities in Canada.

14 THE COURT: Okay. Well, no. I'm not saying that.
15 It may perfectly be the case, not knowing Canadian law, that
16 they're bound by the province's agreement.

17 But the -- leaving aside the carveout in the
18 release for those provinces, as you've described it and is
19 set forth in the settlement agreement, that is, and the
20 carveout for the United States, there are no carveouts for
21 other foreign creditors and similar limitations, if they
22 haven't asserted a claim against the Debtors, I gather.
23 Right?

24 THE WITNESS: That is my understanding.
25 Particularly, I believe what you're referencing for conduct

1 that's unrelated to the United States.

2 THE COURT: Correct.

3 THE WITNESS: Correct.

4 THE COURT: So if, for example, a foreign party
5 has a claim based upon conduct that occurred because of a
6 foreign entity, other than the settling provinces or the
7 provinces that are carved out of the release, they would be
8 bound by this release?

9 THE WITNESS: Just to confirm I understand your
10 question, are you asking me if foreign governments, or
11 foreign entities, or foreign plaintiffs generally speaking?

12 THE COURT: Well, I'll use one of Mr. Underwood's
13 clients as an example. Let's say that its claim really is
14 based on conduct by Purdue Canada.

15 THE WITNESS: Okay.

16 THE COURT: Which in large measure I think is the
17 reason why the Debtors argue that it should be classified as
18 it is. It's in a class, therefore, that's getting \$15
19 million pro rata with the other general unsecured creditors.
20 It would be precluded by this release from pursuing a claim
21 against Purdue Canada?

22 THE WITNESS: If the underlying conduct is related
23 to U.S. opioid-related activities --

24 THE COURT: But what if the underlying conduct is
25 related only to Canadian activities?

1 THE WITNESS: No. I (indiscernible).

2 THE COURT: Let's assume that if that is the case,
3 I just want to make sure why is it that the Sacklers need
4 that release if it's conduct that is just caused by the --
5 of the Canadian company?

6 MR. JOSEPH: It has nothing to do with redirect,
7 but just go ahead and say it.

8 MR. UZZI: Your Honor, it's Gerard Uzzi. I
9 apologize that I'm interrupting, but it may -- if I could be
10 helpful in answering that question --

11 THE COURT: Okay.

12 MR. UZZI: -- I think there's some confusion. I
13 think the releasees -- the releases as we've drafted them
14 and what we're looking for is all related to conduct of the
15 Debtor, and as related to conduct of the Debtor.

16 So what the Canadian stipulation did was to
17 clarify the limits of the release. To answer your specific
18 question, to the extent that there is a claim against Purdue
19 Canada that is for Purdue Canada's own conduct, that claim
20 is not being released, Your Honor.

21 THE COURT: Okay.

22 MR. UZZI: The claims, to be clear --

23 THE COURT: So let me just --

24 MR. ROBERTSON: Your Honor --

25 THE COURT: I'm sorry. I appreciate that

1 clarification, but I just want to make sure that would
2 include not just the provinces but also other creditors who
3 only have a claim against Purdue Canada?

4 MR. UZZI: That is correct, Your Honor, but --

5 MR. GOLD: Excuse me, Your Honor. I am concerned
6 that this witness is getting educated by the argument --

7 THE COURT: No, no. I -- Mr. Gold, there are two
8 different things going on here.

9 Mr. Lynam's declaration is submitted for the
10 purpose of saying that the release is necessary for the
11 settlement that Side B has entered into. And I'm trying to
12 probe why it is necessary. Part of that requires me to ask
13 what is settled, and if he's not the one to know what is
14 settled, then I can certainly hear from the lawyers who
15 drafted it. And then I can decide whether I want to ask
16 him, "All right, having that clarified, is it -- in your
17 mind, is it necessary to have that released?" But if it's
18 not being released, I don't have to ask him that question.
19 So I think it's -- so I appreciate the (indiscernible).

20 MR. UZZI: If I could just add on --

21 THE COURT: It wasn't clear to me. And I'm not
22 sure it was clear to Mr. Underwood, so I just wanted to --
23 so that's why --

24 MR. UZZI: Well, if I can --

25 THE COURT: -- I appreciate your telling me that.

1 MR. UZZI: So if I can give you the distinctions,
2 Your Honor --

3 THE COURT: OKAY.

4 MR. UZZI: And then we will deal with this, of
5 course, at closing as to the specific language in the plan
6 and how it relates to many of your questions.

7 There's two types of claims I think we can talk
8 about. One is the type of claim that you asked about and I
9 just mentioned. That is Purdue Canada's own conduct. That
10 is the conduct of Purdue Canada separate and apart from
11 these U.S. Debtors.

12 THE COURT: Right.

13 MR. UZZI: In Canada, those --

14 THE COURT: That could be any foreign
15 (indiscernible).

16 MR. UZZI: Yes. Yes. I'm just using Purdue
17 Canada as the example.

18 THE COURT: Okay.

19 MR. UZZI: That's not being released, Your Honor.
20 But to be clear, many of the claims, if not all the claims
21 against Purdue Canada, even being asserted in Canada, are
22 really being asserted as based upon claims of the conduct of
23 Purdue U.S. And that's --

24 THE COURT: Well, that depends on ultimately how a
25 Court -- where that comes out as far as the Court decides.

1 But I understand.

2 MR. UZZI: Well, yes.

3 THE COURT: Yes. That's fine.

4 MR. UZZI: Yes.

5 THE COURT: Okay.

6 MR. UZZI: Yes. And so if you read the -- for
7 your benefit, Your Honor, and maybe the benefit of some
8 others, if you understand that and you read the Canadian
9 stipulation against that backdrop, it kind of makes sense
10 why the definition of continuing claims and what the
11 Canadian provinces were looking for were clarification on
12 that point, Your Honor.

13 THE COURT: All right. But there's always a
14 concern that when one side -- one party clarifies something,
15 the folks who have not clarified it think, "Oh, well, maybe
16 I'm not in that same boat."

17 MR. UZZI: I --

18 THE COURT: I think the record's clear now.

19 MR. UZZI: No, and I'll just add --

20 MR. ROBERTSON: Your Honor --

21 MR. UZZI: -- one thing, Your Honor. The plan, I
22 believe, has been actually amended, and there's so much
23 paper flying around, Your Honor, so I don't know what's been
24 filed yet or not. The plan is being amended to clarify that
25 as well.

1 THE COURT: Okay.

2 MR. ROBERTSON: Yes. Your Honor, on that point --
3 this is Christopher Robertson on behalf of the Debtors. I
4 presented the Canadian stipulation, and so I just want to
5 clarify that one point. If you look at the seventh amended
6 plan at the definition of exclude claim, that definition has
7 been amended to essentially incorporate the concept of
8 continuing claim to not only apply to the (indiscernible)
9 government but to all creditors.

10 THE COURT: Okay. All right.

11 MR. ROBERTSON: Thank you.

12 MR. UZZI: Thank you.

13 THE COURT: I think those are all of my questions
14 for Mr. Lynam. I appreciate that may, just as with Mr.
15 Weinberger, elicit other cross and perhaps redirect, so I'll
16 open to the floor to anyone else that wants to cross examine
17 Mr. Lynam on those questions.

18 MR. GOLD: I have more questions, Your Honor, but
19 as before, I will defer to allow anyone else to go first.

20 THE COURT: Okay.

21 MR. UNDERWOOD: Your Honor, just before we get to
22 re-cross, the status of the matter as represented by Mr.
23 Robertson through the Debtor is, as I understand it, that
24 the --

25 THE COURT: Okay.

1 MR. UNDERWOOD: -- essentially Canada claims are
2 applicable against Canadian corporation and assets of non-
3 Debtors. They're not being released in Canada.

4 THE COURT: Okay.

5 MR. UNDERWOOD: I just want to make sure we're on
6 the same page, but I also want to make clear that in
7 conversations with counsel for the information officer up in
8 Canada in the CCAA proceeding, his understanding is
9 identical, i.e. that it is of concern to the information
10 officer that Canadian claims be preserved against Canadian
11 assets, and Canadians that are potentially liable will
12 release third parties.

13 THE COURT: All right. And apparently there's no
14 dispute over that --

15 MR. UNDERWOOD: Good.

16 THE COURT: -- as far as the seventh amended plan
17 is concerned. Although, again, it's a CCAA only in the
18 sense that it's a recognition proceeding under the Canadian
19 law.

20 MR. UNDERWOOD: Correct, Your Honor. Thank you.

21 THE COURT: All right. Does anyone else want to
22 cross examine Mr. Lynam before we get back to Mr. Gold?

23 MR. HIGGINS: Yes, Your Honor. Ben Higgins for
24 the United States Trustee. May I proceed?

25 THE COURT: Yes.

1 MR. HIGGINS: Thank you.

2 CROSS EXAMINATION OF GARRETT LYNAM

3 BY MR. HIGGINS:

4 Q Good afternoon, Mr. Lynam. My name is Benjamin
5 Higgins. I represent the United States Trustee. Can you
6 hear me okay?

7 A Yes, I can. Thank you.

8 Q Thank you. The Court was just asking you about the
9 definition of related parties. Do you recall that
10 discussions?

11 A Yes, I do.

12 Q And you testified that it was important to the Sackler
13 families that the scope of their release be very broad for
14 the sake of global peace; is that correct?

15 A Correct.

16 Q And you testified that the release is broad enough it
17 includes parties not contributing to the settlement; is that
18 correct?

19 A That is correct.

20 Q And in fact, it includes parties such as consultants
21 because of a concern that litigation against them could drag
22 the Sackler family members in as witnesses; is that correct?

23 A Yes, generally correct. Yes.

24 THE COURT: Unless they're an excluded party.

25 MR. HIGGINS: Correct.

1 THE COURT: Okay.

2 MR. HIGGINS: Thank you. No further questions,
3 Your Honor.

4 THE COURT: Okay. All right. Shall we go back to
5 Mr. Gold then? Larry, I'm sorry.

6 MR. FOGELMAN: Your Honor, this is Larry Fogelman
7 from the United States Attorney's Office.

8 THE COURT: I know it takes a little while to get
9 back on, so you go ahead, Mr. Fogelman

10 MR. FOGELMAN: Thank you, Your Honor.

11 CROSS EXAMINATION OF GARRETT LYNAM

12 BY MR. FOGELMAN:

13 Q Referring you back to the language of the release, are
14 you aware that the release includes conduct relating to the
15 sale of non-opioid products?

16 THE COURT: Can I interrupt for a second? I just
17 -- I think this is an important point to clarify. Does the
18 United States have any claims that are affected by the
19 third-party release given the carveout in the plan?

20 MR. FOGELMAN: We are carved out, Your Honor, but
21 we do have concerns about the release from a policy and
22 regulatory standpoint.

23 THE COURT: How does that -- but if you're carved
24 out, how does the U.S. have standing as opposed to the U.S.
25 Trustee?

1 MR. FOGELMAN: Your Honor, the United States has
2 the ability to file its position in any case in federal
3 court. The United States has statutory ability to file what
4 are called statements of interest that allow the United
5 States to weigh in on issues that are of significance to the
6 government.

7 THE COURT: Even if there's no remedy to give the
8 government?

9 MR. FOGELMAN: Your Honor, it's quite common. As
10 Your Honor observed in the (indiscernible) case, we filed a
11 brief addressing our concerns about third-party releases.
12 Even though we were not a party in that case, we did file a
13 Second Circuit brief regarding third-party release issues in
14 that case as well. And it's quite common that the United
15 States files statements of interest in proceedings
16 throughout the country when the government wants its views
17 to be known.

18 THE COURT: Well, okay. Although, again, in this
19 particular case, the government's a party, and it's dealt
20 with as a party with the carveout as opposed to in that case
21 where one could argue that it was concerned about precedent
22 affecting it in the future.

23 MR. FOGELMAN: Your Honor, certainly we're a
24 party, and certainly you're also correct that we do have a
25 carveout, but that -- we nevertheless have a substantial

1 interest in all of the issues being addressed concerning the
2 third-party release, and we would like an opportunity to be
3 heard on these issues and to question this witness about the
4 scope of the release.

5 THE COURT: Okay. All right. Well, you can go
6 ahead.

7 MR. FOGELMAN: Thank you, Your Honor.

8 BY MR. FOGELMAN:

9 Q Are you aware that the release includes a release for
10 conduct relating to the sale of non-opioid products?

11 A Yes. My understanding is the release concerns conduct
12 of Purdue Pharma in the United States, which does sell non-
13 opioid products.

14 Q The actions have that have been filed against the
15 Sacklers that were the subject of the negotiations and the
16 MDL, that didn't deal with non-opioid products, did it?

17 A I'm not sure. Not to my knowledge.

18 Q And I'm just going to read you one excerpt from the
19 release. It's Subparagraph 7. It describes how the release
20 covers opioid-related activities or the Debtor's
21 development, production, manufacturing, licensing, labeling,
22 marketing, advertising, promotion, distribution, or sale of
23 non-opioid products, or the use or receipt of any proceeds
24 therefrom in each case, including the Debtor's interactions
25 with regulators, and regardless where in the world any such

1 activities or any resultant loss, injury, or damage
2 resulting therefrom occurred.

3 And then I'll -- I'm just going to direct you to the
4 last clause of that same release paragraph in the plan that
5 also includes any other acts, conduct, omission, event,
6 transaction, occurrence, or continuing condition in any way
7 relating to any of the foregoing.

8 Did you hear me clearly on those, or are aware of the
9 excerpts I just read to you?

10 A I heard you say, but in fairness, it's a very long
11 piece of text that you just read to me.

12 Q Understood. It's pretty vague, right?

13 A I don't necessarily think it's vague. It's just very
14 long.

15 Q So sitting here today, can you tell me, for example,
16 that if the Sacklers were implicated in violations of state
17 tax laws relating to anything concerning manufacture or
18 production of opioids, is that tax claim now released?

19 A My understanding is that tax claims are not part of the
20 release. Perhaps one of the lawyers who drafted it can
21 confirm my understanding.

22 MR. JOSEPH: Your Honor, I think this highlights
23 that this isn't the appropriate witness to be going --

24 THE COURT: Well, I think it -- let me phrase the
25 question differently.

1 As far as your testimony, Mr. Lynam, in evaluating
2 the importance, what went into your evaluation on behalf of
3 the Side B family, of the importance of obtaining a release
4 relating to the Debtor's sale of non-opioid products or
5 other activity related to that, such as tax payments or
6 underpayment of taxes?

7 THE WITNESS: Your Honor, my assessment of the
8 necessity for a broad release was based on my observation,
9 my experience working for the Sackler family, and also the
10 advice from legal counsel that a broad release --

11 MR. JOSEPH: Don't go into -- don't --

12 THE COURT: Right. That's fine.

13 THE WITNESS: Yes, but -- I understand. A broad
14 release is necessary, and as a fiduciary, that is the basis
15 of my recommendation. And to the extent I have the
16 authority, my decisions actually execute the settlement
17 agreement in that capacity.

18 THE COURT: But you're -- are you aware of claims
19 asserted against the Sacklers -- and I'm using that term
20 broadly -- including the companies that they own that are
21 contributing to the settlement for activities of Purdue
22 related to non-opioid products?

23 MR. FOGELMAN: Your Honor, I'm not aware of any
24 claims that are solely related to non-opioid products.

25 THE COURT: I'm talking about third-party claims

1 now, of course, because that's what the release we're
2 talking about is. And the discovery that's taken place in
3 this case and in other cases, none of that has really
4 pertained to the sale of non-opioid products, right?

5 MR. FOGELMAN: That is my understanding.

6 THE COURT: Okay. Or claims for Purdue's
7 nonpayment of taxes or the like?

8 MR. FOGELMAN: Yes, the litigation is opioid-
9 related litigation.

10 THE COURT: Okay. And the veil piercing claims
11 are being settled as part of the Debtor's release, right?

12 MR. FOGELMAN: Just to clarify, Your Honor --

13 THE COURT: Claims for piercing the corporate veil
14 and alter ego, those are being settled as part of the
15 Debtor's release?

16 MR. FOGELMAN: Yes, correct, yes.

17 THE COURT: Okay. All right. I'm sorry to
18 interrupt you, Mr. Fogelman, but I just wanted to tie it
19 into Mr. Lynam's declaration as opposed to interpreting the
20 release.

21 MR. FOGELMAN: Thank you, Your Honor.

22 BY MR. FOGELMAN:

23 Q Is it your understanding in counseling your clients to
24 accept the release or to require the release that it would
25 also release the Sackler family from potential environmental

1 liabilities to the extent they are directly liable and not
2 liable derivatively?

3 A So I testified that my understanding of the release is
4 that it covers activities or claims relating to the Debtors.

5 Q And that includes if there was an environmental problem
6 created relating to the manufacture of opioids, the Sackler
7 family would now be globally released from any such
8 environmental claims to the extent that they have direct
9 liability on those claims; is that correct, from the States?

10 A Mr. Fogelman, I don't think the Sackler family has been
11 involved with Purdue since 2019. And I'm not aware of any
12 claim like that that's pending. So I think this is purely
13 hypothetical.

14 Q Are you saying --

15 THE COURT: But in terms of balancing the risks,
16 the release covers it, right?

17 THE WITNESS: Yes.

18 THE COURT: All right. So, again, maybe not risk
19 to either party, but the one taking the risk is the
20 hypothetical creditor as opposed to the hypothetical lawsuit
21 against the Sacklers.

22 BY MR. FOGELMAN:

23 Q And to the extent that the Sacklers may be liable
24 directly for their advice or conduct concerning employees of
25 Purdue, if the Sacklers -- if there's any employment law

1 violations, not Purdue, but the Sacklers are directly liable
2 for, is this absolving them of that as well?

3 A Mr. Fogelman, I have not analyzed release and the
4 accepted claims from the scope of the release with that fact
5 scenario in mind, so I'm just going to respond I don't know.

6 Q But, your intent was to cover ---

7 THE COURT: Again, I'm trying to tie this into
8 your affidavit. You're saying that this is important to
9 them too -- if it is covered by the release, it's important
10 to them too?

11 THE WITNESS: Your Honor, it's important to have a
12 very broad release to achieve global peace. That
13 specifically is -- and I think what we're getting at is it's
14 really related to opioid-related litigation because that's
15 the litigation that was ongoing and resulted in Purdue
16 Pharma filing for bankruptcy.

17 THE COURT: Okay. That's helpful to hear for me
18 that's it's related to opioid-related litigation because
19 global peace can mean having a release from a hit-and-run
20 accident. So, thank you.

21 BY MR. FOGELMAN:

22 Q Right. But environmental violations aren't related to
23 the current opioid-related litigation, but they are,
24 nevertheless, covered by this release you just said, right?

25 THE COURT: Well, Mr. Fogelman, he doesn't know,

1 but I think what he said is what's important is a broad
2 release related to opioid-related litigation.

3 MR. FOGELMAN: And respectfully, Your Honor, it's
4 not worded as such.

5 THE COURT: I understand. I understand.

6 MR. FOGELMAN: But I'll move on.

7 THE COURT: I understand, but again, the witness
8 has offered up as to why it's important to have a release.

9 MR. FOGELMAN: Okay. Understood, Your Honor.
10 Thank you.

11 THE COURT: And he has testified to why it's
12 important.

13 BY MR. FOGELMAN:

14 Q And, sir, have you reviewed Appendix H to your
15 disclosure statement listing more than a thousand
16 individuals and entities and other categories of individuals
17 and entities who are receiving a third-party release?

18 A Yes, I have.

19 Q Of those thousands, how many are actually making a
20 financial contribution to the estate?

21 A So the cash contribution portion of the settlement is
22 being paid by the Sackler family, specifically out of the
23 sale and proceeds from the IACs. So, in this case, it would
24 be the Trust that own the IACs that would be making that
25 payment or to the extent that there's a funding deadline

1 that comes up and there has not been a sale that yields the
2 specific payments, it will be paid by -- for the Jonathan
3 Sackler's family, it will be paid by trusts that receive
4 money from Purdue Pharma. That is our current intention.

5 Q Okay. But that's it as far as you know in terms of
6 who's providing the financial contribution to the estate?

7 A Correct, yes.

8 Q Okay. So, for example, all of the -- the fact that the
9 release provision, and I believe it's discussed before, but
10 it references financial advisors, attorneys, accountants,
11 investment bankers, consultants, experts, and other
12 professionals, none of those are giving a financial
13 contribution to the estate, right?

14 A Correct.

15 Q Okay.

16 MR. FOGELMAN: I have nothing further. Thank you,
17 Your Honor.

18 THE COURT: Okay. All right. I think we're back
19 to Mr. Gold.

20 MR. GOLD: We are unless Mr. Underwood has
21 something more to contribute, Your Honor. Not that I don't
22 particularly -- Matthew Gold, again, I'm prepared to go
23 ahead now.

24 THE COURT: Why don't you go ahead?

25 MR. GOLD: Okay. Thank you, Your Honor.

1 CROSS-EXAMINATION OF GARRETT LYNAM

2 BY MR. GOLD:

3 Q Okay. Thank you. Mr. Lynam, I do want to focus for
4 the moment on global piece, which, to my awareness, was not
5 a phrase that was used in your declaration, but now that
6 you've mentioned it a few times in your testimony, I do wish
7 to explore it. And I also want to question you about a
8 statement that you made earlier, which I'll just read so
9 that everyone is clear on what it says that "I think that
10 any entity that's left out that is an affiliate of the
11 Sackler family, even if it had no connection to Purdue, I
12 would be concerned as a fiduciary that that entity would be
13 sued and it's not necessarily the merit of the case, it's
14 just the volume of lawsuits." So did you mean by that --

15 THE COURT: I'm sorry, is this in his declaration
16 or somewhere else?

17 MR. GOLD: This is his testimony about 20 minutes
18 or so ago, Your Honor.

19 THE COURT: All right, well, go ahead.

20 BY MR. GOLD:

21 Q When you said that it's not necessarily the merits of
22 the case, do I understand correctly that you're saying, the
23 party -- you want to make sure that the parties to the
24 release don't get sued even if the merits may be strong or
25 weak, that the merits of it really don't enter into it, they

1 just want to be left out. Is that a correct understanding
2 of what you meant by that?

3 A What I meant by it was that it's extremely expensive
4 and stressful to defend oneself from many, many lawsuits in
5 different jurisdictions and courtrooms.

6 Q Regardless of the underlying strength of the merits,
7 that statement is correct?

8 A Yes.

9 Q Thank you. Now, turning to global piece, I'm going to
10 -- well, if -- I'm sorry. Let me put it this way. Are you
11 aware that there are ten states that have objected to the
12 confirmation or the plan?

13 A Yes, I am aware that there are nonconsenting states.

14 Q Okay. Thank you. If those states were permitted to
15 opt out of the release and to preserve their actions, would
16 that, in your view, be antithetical to the concept of global
17 peace?

18 A Yes. I would view that as a material change to the
19 release.

20 Q Thank you. Such that were that to happen, you would no
21 longer be recommending that the settlement be approved or
22 that the payments be made. Is that correct?

23 A Correct.

24 Q Now, and you make that statement regardless of the
25 particular merits of the claims of any particular state,

1 whether that state or strong or weak claims -- I'm stating
2 myself -- that's true regardless of your particular
3 investigation into the strength of the claim of those
4 states. Is that correct?

5 A Yes.

6 Q Thank you. Now, if it was only one state that was
7 permitted to opt out, would your opinion be the same?

8 A Yes.

9 Q Thank you. Now I want to return to the Canadian
10 stipulation which was discussed earlier. It seems that you
11 -- correct me if I'm wrong -- but it seems that you're aware
12 of that so that it's not necessary to review it in
13 particular and we've had some discussion regarding the
14 extent of it. Is that correct?

15 A If you are going to ask me specific questions about it,
16 I would like to refresh my memory by looking at it, but it
17 depends on what your question is.

18 Q That's fair and if that is necessary, please let me
19 know. The -- what I would like to say is that is it not
20 true that that stipulation and the carve out there is also
21 antithetical to your notion of global peace because it
22 expressly provides that the parties you are concerned with
23 remain open to ongoing litigation?

24 A No. And I disagree. So this is talking about non-U.S.
25 litigation involving non-U.S. conduct. My interpretation of

1 the release which is being part of a Chapter 11 plan in U.S.
2 Bankruptcy Court, is American courts may not have
3 jurisdiction to stop claims relating to non-U.S. conduct
4 arising in non-U.S. courts. So, in my view, it doesn't
5 change the release.

6 Q I'm not asking whether it changes the release. My
7 question goes to whether it changes what is essentially the
8 business position of your clients in terms of what is
9 necessary for them to be receiving in order for you to be in
10 agreement that you would recommend the deal.

11 So, again, you're saying that with these claims carved
12 out and being permitted to go forward, you still believe
13 that the overall settlement is one that you're approving and
14 authorizing the payments thereunder. Is that correct?

15 A Yes. Sorry, Greg, did you want to say something?

16 MR. JOSEPH: Just objected to form. It was very
17 long, but if you understand it and the Judge determines
18 whether you answered.

19 THE COURT: You were referring to the Canadian
20 settlement, right? That's what you understood, Mr. Lynam,
21 when Mr. Gold was talking about it?

22 THE WITNESS: I think so, but to be frank, I am
23 confused about the question and I was going to ask Mr. Gold
24 to rephrase it.

25 THE COURT: I think you've already answered the

1 question, frankly.

2 THE WITNESS: Okay.

3 THE COURT: You've analyzed the merits of having a
4 release of non-U.S. litigation over non-U.S. conduct as
5 compared to what you believe is released and made that
6 assessment based on that. I don't think you need to ask the
7 question again, Mr. Gold.

8 MR. GOLD: No, no. I appreciate that. I will
9 move onto my next question.

10 BY MR. GOLD:

11 Q Which is again, to properly understand your answer to a
12 different question that I gave before, if I understood you
13 correctly, you observed that the Canadian release was in a
14 different category because as a legal matter, there were
15 limitations on whether that release could be compelled by a
16 U.S. Court. Is that correct?

17 A Mr. Gold, can you try to -- can you rephrase the
18 question again? I just want to -- it's a highly technical
19 question and I just want to make sure that I understand it.

20 Q Certainly. Did you -- wasn't your observation that one
21 relevant factor in assessment the meaningfulness of the
22 Canadian release was that it was -- that there was a
23 question about whether a United States court would have
24 jurisdiction to compel the releases of these Canadian causes
25 of action.

1 A Mr. Gold, I'm not sure what you're referring to by
2 "Canadian release."

3 Q The releases that were -- excuse me, you're absolutely
4 right. It's not a release. It's the carve out from
5 releases that are encompassed within the stipulation and are
6 now apparently being incorporated into the plan. The -- is
7 it your -- so, when I said Canadian release, I'm sorry. I
8 was referring to the Canadian carve out, if you will.

9 A Okay. What I'd like to do is try to restate your
10 question, but I still don't understand what you're asking me
11 to answer.

12 THE COURT: I think -- are you trying to set up
13 another question, Mr. Gold?

14 MR. GOLD: Well, I was trying to break up my prior
15 question that was objected to into two parts so that it
16 would be less long and objectionable to Mr. Joseph and
17 perhaps others, but so I guess that means my answer to Your
18 Honor's question is yes.

19 THE COURT: So you're trying to lay a foundation
20 for another question by re-asking the same question you
21 asked before as far as the reason for being willing to carve
22 out releases of non-U.S. -- pertaining to non-U.S. conduct?

23 MR. GOLD: Well, Your Honor, I'm trying to
24 understand his response to it.

25 THE COURT: Well, he said it. He said it just as

1 you've assumed it, I think, which is that because of
2 concerns as to whether a U.S. Court in position of an
3 injunction to pursue claims in a foreign court based on
4 foreign conduct would be enforceable, to carve out -- that's
5 one factor in agreeing to a carve out and making such a
6 release not critical, unlike the release by the ten states
7 or any one of them.

8 MR. GOLD: Thank you, Your Honor. Once again,
9 you've stated it more succinctly and better than I could. I
10 would only ask that the witness state that he agrees with
11 what Your Honor just said so that the record is clear.

12 THE COURT: Or generally, Mr. Lynam on that point.
13 BY MR. FOGELMAN:

14 A So I'd like to respond that I generally agree with what
15 Judge Drain just said. I did not hear anything that I
16 disagreed with. But, again, this is a highly technical
17 point and some of the terminology that people are using may
18 not be accurate. So I'll just leave it at that.

19 MR GOLD: Thank you, Your Honor and Mr. Lynam, I
20 have no further questions.

21 THE COURT: Okay. All right. Anyone else before
22 Mr. Joseph and redirect?

23 ALLEN UNDERWOOD: Your Honor, I have a few
24 questions for the witness if that's all right.

25 THE COURT: All right.

1 CROSS-EXAMINATION OF GARRETT LYNAM

2 BY MR. UNDERWOOD:

3 Q Allen Underwood from the firm of Lite, DePalma,
4 Greenberg, Afanador on behalf of certain Canadian Municipal
5 Creditors and certain Canadian First Nation Creditors. My
6 first question, Mr. Lynam, is it not true that as the
7 executor of an estate you have a duty to the creditors of
8 that estate?

9 A Mr. Underwood, I think you skipped a little bit in your
10 audio, but I think what you were asking was as an executor
11 of an estate, do I have a duty to the creditors of that
12 estate. Is that correct?

13 Q That is correct.

14 A Okay. So I view my duty as an executor to maximize the
15 value of the estate.

16 Q And isn't it true though in terms of maximizing value
17 of the estate, the value of the estate should first go to
18 the creditors of that estate in advance of any distribution
19 to beneficiaries? Is that not correct?

20 MR. JOSEPH: Objection. This goes way beyond
21 anything in his declaration. It has nothing to do with the
22 release. He's now asking for legal opinions as to an order
23 of priority of an estate under unknown state law.

24 MR. UNDERWOOD: Isn't it true he's the executor of
25 an estate? I mean this is his duty. This is his job. This

1 is primary 101. I'm getting somewhere, Your Honor, if
2 you'll let me.

3 THE COURT: Okay.

4 MR. JOSEPH: Your Honor, he's also a general
5 counsel and he has duties in that capacity. It's unrelated
6 to what he's testifying to.

7 MR. UNDERWOOD: Well, Your Honor --

8 THE COURT: Why don't you ask the next question,
9 Mr. Underwood, because I'm not quite sure where you're going
10 with this.

11 MR. UNDERWOOD: Certainly.

12 BY MR. UNDERWOOD:

13 Q So, Mr. Lynam, you just stated before that cash will be
14 paid by the sale of the IAC, from the trust that owns the
15 IAC to the Debtor. Isn't it correct that you stated that?

16 A It's not being paid to the Debtor. It will be paid to
17 the NVT, but generally, everything else I agree with, yes.

18 Q Okay. And Purdue Canada is an IAC?

19 A Correct.

20 Q What is the time frame of the sale for Purdue Canada,
21 if you know?

22 MR. JOSEPH: Objection, it's way beyond the scope
23 of direct.

24 THE COURT: Sustained. Again, Mr. Underwood, this
25 witness is testifying as to whether and to what extent the

1 release under the plan are critical to the releasing
2 parties.

3 MR. UNDERWOOD: Right. And I think what my line
4 of questioning is intended to drive at is the fact that the
5 asset for which we have a carve out from this release is
6 going to be contributed in toto to the U.S. Trust without
7 any benefit to my clients who are not within that trust
8 class.

9 MR. JOSEPH: Your Honor, that may be an argument
10 that counsel wants to make. It has nothing to do with this
11 witness.

12 THE COURT: He's not evaluating -- he's not
13 discussing when things are getting sold or anything like
14 that.

15 MR. UNDERWOOD: But he would be the person or a
16 person involved in the liquidation of that asset on behalf
17 of the estate or the trust that are before the Court.
18 That's what he's talking about.

19 THE COURT: Well, we did have witnesses already
20 that talked about the plan and the schedule for including
21 the liquidation analysis and comparison for the sale of the
22 assets. He's not really the witness that is here to testify
23 on the sale of the assets under the settlement.

24 BY MR. UNDERWOOD:

25 Q Let me ask Mr. Lynam a hypothetical question. If he

1 received and was provided and served with an order of a
2 Canadian court that required him to take steps with regard
3 to trusts or the estate in question -- and I'm asking this
4 because you already brought into question the scope of the
5 jurisdiction in this Court -- what would his initial --
6 would he ignore that order? Is that correct?

7 MR. JOSEPH: Objection, Your Honor. That's a
8 totally inappropriate question, totally inappropriate
9 hypothetical. We have no idea if there's jurisdiction. It
10 has nothing to do with what he's testifying about. We don't
11 know what the order says. We don't know whether it was
12 served.

13 THE COURT: Mr. Underwood, again, this might be
14 the type of question, you know if someone called me up
15 during a deposition, I decide whether you can answer the
16 question, but we're not at that -- that's not what's going
17 on here.

18 MR. UNDERWOOD: I understand.

19 THE COURT: So I'll sustain the objection.

20 BY MR. UNDERWOOD:

21 Q Mr. Lynam, isn't it true that even in light of the
22 carve out that is proposed under the seventh amended plan,
23 there are circumstances where Canadian assets would continue
24 to be protected by the non-Debtor releases granted under
25 this proposed plan?

1 A Mr. Underwood, I don't understand the question.

2 THE COURT: I think that's a question for the
3 lawyers and from reading the document, I think the answer is
4 yes if it's on account of U.S. claims, but I don't think
5 it's a question for Mr. Lynam. Make a note and you can ask
6 it during oral argument, Mr. Underwood.

7 MR. UNDERWOOD: A couple of major issues to cover
8 under oral argument, Judge, thank you.

9 THE COURT: Okay. All right. Okay, any redirect?

10 MR. JOSEPH: A little bit, Your Honor.

11 REDIRECT EXAMINATION OF GARRETT LYNAM

12 BY MR. JOSEPH:

13 Q Mr. Lynam, you were asked questions related to
14 independent contractors, affiliates, consultants, and others
15 covered by the release. Would you tell the Court whether or
16 not there is any concern apart from discovery costs that the
17 family may bear, potential claims of contribution against
18 the family?

19 A Yes. I would be concerned that people just wouldn't
20 want to work for the Sackler family.

21 Q Is there any concern that anyone --

22 THE COURT: I'm sorry. All right. I'll ask the
23 question after you're done, but are you talking about work
24 in the future?

25 THE WITNESS: No, continued working, or maybe work

1 in the future, but just in general.

2 BY MR. JOSEPH:

3 Q Would you tell the Court whether or not there was a
4 concern that any such entity might assert a financial claim
5 against the family or contribution or indemnification?

6 MR. FOGELMAN: Objection, leading, Your Honor.

7 THE COURT: That's true.

8 MR. JOSEPH: That's why I asked whether or not
9 there was a concern.

10 THE COURT: Well, it's still leading. If you
11 could rephrase it.

12 MR. JOSEPH: Certainly.

13 BY MR. JOSEPH:

14 Q Has the issue of contribution or indemnification
15 affected or not affected your view as to the need to extend
16 the release beyond family members?

17 A Yes, it has.

18 Q In what way?

19 A So when the entities and trusts that I work with engage
20 service providers, they may be indemnified and we typically
21 agree to customary indemnification clauses. And if a third-
22 party incurs a cost just solely because of its engagement,
23 that may be indemnified.

24 Q You mentioned earlier in your testimony that release
25 claims have to be related to the conduct of the Debtor in

1 connection with the Canadian claims and otherwise. Would
2 you tell the Court whether or not there has been any concern
3 that the same sort of massive litigation that was brought
4 for opioid products might be brought for non-opioid products
5 if those are not released?

6 MR. FOGELMAN: Objection, Your Honor. His
7 questions are still continuing to suggest the answers in
8 them whether they're phrased whether or not or otherwise.

9 MR. JOSEPH: I'll try again, Your Honor.

10 THE COURT: Well, let me ask it. What is the
11 basis -- I think we already -- I've already asked this
12 question. What is the basis for insisting on a release that
13 covers non-opioid product activities related to Purdue?

14 THE WITNESS: Your Honor, the release is drafted
15 broadly because lawyers can be clever and they can style a
16 lawsuit whether -- if something is not opioid related,
17 perhaps they can style it as opioid related. I'm not really
18 sure though. It's just something as a fiduciary, I need to
19 recommend a deal that has global peace.

20 MR. JOSEPH: I don't have any additional questions
21 for the witness.

22 THE COURT: I have a question related to that, Mr.
23 Lynam. Sometimes the case when a settling party wants
24 peace, but is afraid of strike suits, clever lawyers -- I
25 think that was the phrase you used -- that such suits in the

1 first instance so that the party making the injunction can
2 make the decision be brought in the court that issued the
3 injunction to see whether it was covered or not, whether it
4 was clever lawyering or independence, would that resolve
5 your concern if there was a such as a provision?

6 THE WITNESS: Your Honor, what would resolve my
7 concern is the claims being released in the first instance
8 and not being ---

9 THE COURT: Obviously, that is the easiest way to
10 resolve your concern. If there was a potential problem with
11 that because it was overbroad, wouldn't requiring a suit
12 that raised an issue as to whether the junction applied or
13 not being brought in the court that issued the injunction
14 resolve the issue of strike suits or clever lawyering around
15 the injunction?

16 THE WITNESS: Your Honor, if the release that I've
17 been contemplating is not available, then yes, I do think
18 having a test forum, which I understand your question to be
19 asking about, to test whether a claim is covered or not by
20 the release, would be -- it wouldn't be helpful necessarily,
21 but it would be the reality if that's what you order.

22 THE COURT: Okay. All right. I think, Mr.
23 Fogelman, you were just objecting to a couple of the
24 questions, right? You didn't have any -- do you have any
25 recross?

1 MR. FOGELMAN: No, Your Honor, thank you.

2 THE COURT: Okay. All right. Mr. Joseph, do you
3 have any redirect on my question?

4 MR. JOSEPH: No, Your Honor.

5 THE COURT: Okay. All right. Thank you, Mr.
6 Lynam, you can sign off at this point.

7 THE WITNESS: Thank you.

8 THE COURT: Okay. All right, let me --

9 MAN 1: Your Honor.

10 THE COURT: Yes.

11 MAN 1: I wanted to wait until the witness was off
12 the stand to not run any risk of someone saying I was trying
13 to help answer some of your questions, anybody was helping
14 (indiscernible). There's no risk to comment since obviously
15 as the ultimate Debtor fiduciary. I do want to clarify one
16 thing based on my understanding which I sure hope was right.
17 Just for example, if Purdue Canada has liability to
18 Plaintiffs for its own conduct, it has to deal with that and
19 there's nothing in our releases in any way, shape, or form
20 that releases --.

21 THE COURT: I understand. I think Mr. Robertson
22 was clear on that point. In any event, we'll look at the
23 amendment to the plan.

24 MAN 1: But just to be clear, that was always
25 true. That's not releasing the Canadian element. We have

1 never proposed to give IACs release.

2 THE COURT: I think counsel for the U.S. Trustee
3 asked a question about that, that type of thing in one of
4 the earlier witnesses and I wanted to explain.

5 MAN 1: Yes. I just wanted to make sure our view
6 was clear. Thank you, Your Honor.

7 THE COURT: Okay. We have one other witness for
8 today, Mr. Ives. I don't know how long he will be, but I
9 think we probably should go ahead with him. It's on the
10 same type of subject that we just discussed with Mr. Lynam.
11 So, if he's available, can we get him on the screen?

12 MAN 2: We are reaching out to him and having him
13 dial in.

14 THE COURT: Okay.

15 MR. GOLD: Your Honor, Matthew Gold. May I speak?

16 THE COURT: Sure.

17 MR. GOLD: I will simply candidly advise the Court
18 and all parties that this ---

19 THE COURT: I'm sorry. You're fading in and out,
20 Mr. Gold.

21 MR. JOSEPH: Your Honor, we can't hear him at all.
22 His screen is totally frozen.

23 THE COURT: Yeah. It's frozen. I think what he
24 was going to tell me is that he expected he had fairly
25 lengthy cross for Mr. Ives as he did for Mr. Lynam, but

1 maybe I'm wrong.

2 MR. GOLD: Can you hear me know, Your Honor?

3 THE COURT: Yes, you're back.

4 MR. GOLD: That's a relief, Your Honor.

5 THE COURT: Must have been a sun spot or
6 something, but go ahead.

7 MR. GOLD: Yes. I'm simply saying that since the
8 parties are proffering two witnesses with the similar
9 positions that's unavoidably where we're going to be. So
10 that's all I --

11 THE COURT: Okay. We'll, let's go ahead with Mr.
12 Ives. I think I see him now on the screen.

13 Would you raise your right hand please? Do you
14 swear or affirm to tell the truth, the whole truth, and
15 nothing but the truth so help you God?

16 MR. IVES: I do.

17 THE COURT: And it's Stephen with a P-H and then
18 I-V-E-S?

19 MR. IVES: Yes.

20 THE COURT: Okay. And Mr. Ives, you submitted a
21 declaration dated August 2, 2021, which under my order of
22 setting the procedures for this hearing on this matter is
23 intended to be your direct testimony. Knowing that and
24 sitting here today on August 13th, is there anything in your
25 declaration that you would wish to change?

1 MR. IVES: No, sir.

2 THE COURT: Okay. And let me ask then, does
3 anyone object to the admission of Mr. Ives' declaration?
4 Okay. I will admit it as his direct testimony.

5 (Declaration of Stephen Ives Admitted Into Evidence)

6 THE COURT: Does anyone want to cross-examine Mr.
7 Ives?

8 MR. GOLD: Yes, Your Honor, Matthew Gold,
9 representing (sound drops).

10 THE COURT: You froze again, Mr. Gold.

11 MR. GOLD: Your Honor, this is -- can you hear me
12 now?

13 THE COURT: Yes, but I perceive problems because
14 your image is stuck.

15 MR. GOLD: That is unfortunate, Your Honor. It
16 seems to be as you said of sun spots. I will try to proceed
17 as quickly as possible if you can hear me now.

18 THE COURT: I can hear you clearly. It's just
19 your image is being frozen, but it's more to be able to see
20 the witness than the lawyer. So why don't you go ahead?

21 MR. GOLD: My image may be a favor to people not
22 to be able to see.

23 CROSS-EXAMINATION OF STEPHEN IVES

24 BY MR. GOLD:

25 Q Mr. Ives, could you please turn to Page 9, Paragraph 24

1 of your declaration?

2 A Okay. I have it.

3 Q You refer there to certain releases. Do you see that?

4 A Yes.

5 Q Did you make an assessment -- without referring to any
6 privileged communication that you received, did you make an
7 assessment of the strength of the claims that would be
8 released?

9 A Without -- I'm sorry, without -- would you say it
10 again? Without representation, was that your question?

11 Q I'm asking whether you personally made an assessment of
12 the strength of claims that would be released?

13 A No.

14 Q I am anticipating counsel's objection that your answer
15 should not include the substance of any communication that
16 came from Side B counsel.

17 A My answer is no.

18 Q Thank you. The -- is it your position that even though
19 one might argue that the claims are weak or meritless, that
20 it is still necessary that those claims be removed?

21 MR. JOSEPH: Objection, Your Honor. This is
22 exactly what was sustained, his questioning against Mr.
23 Lynam. He's not here to attest to his views which he hasn't
24 independently assessed, which he has received legal counsel
25 on as to the strength and merits and whether or not there

1 should be a release regardless of merits as to which he has
2 been advised.

3 THE COURT: All right. Let me ask the question,
4 if I may. As far as the released claims are concerned, does
5 it matter to you whether the claims that are being released
6 are strong or weak?

7 THE WITNESS: No, sir.

8 THE COURT: Okay.

9 MR. GOLD: Thank you, Your Honor, I'll proceed.

10 BY MR. GOLD:

11 Q Mr. Ives, would you please turn to Page 8, Paragraph 21
12 of your declaration?

13 A Okay.

14 Q I'm going to read (indiscernible) that you see what I'm
15 reading and have got it correct? "As a trustee or officer
16 of the Side B Shareholder Payment Parties discussed in
17 Paragraphs 4 and 5 above, I have authority over or
18 meaningful input into the material decisions of those
19 entities -- these entities, excuse me -- including whether
20 to enter into the shareholder settlement agreement and
21 contribute the payment of the shareholder settlement
22 amount." Do you see that?

23 A Yes, sir.

24 Q Of the entities that you listed in your declaration,
25 can you please identify which are the ones you have

1 authority over and which are the ones you have meaningful
2 input into?

3 A The ones that are listed in Paragraphs 4 and 5, I have
4 authority in all of them. I'm an officer or trustee of all
5 those entities.

6 Q That covers all of them? Are there any entities that
7 you are referring to that are outside of 4 and 5?

8 A I don't believe so. I'm sorry. I would need to, if
9 you'd like me, I can go through this list again for myself
10 in just a minute. I will say, yes, I'm sorry. Let me make
11 sure very quickly. I am an officer of Cheyenne Petroleum
12 Company which is not -- I don't believe it's listed here
13 because it shouldn't have been. These are -- Paragraphs 4
14 and 5 are Side B Shareholder Payment Parties. And that's
15 what I understood that I needed to make clear for this
16 declaration.

17 Q I'm not looking for -- thank you for that
18 clarification. I'm not looking to go outside that listing
19 of all entities that you may serve that are unrelated to the
20 purposes that we are discussing today. I'm just confining
21 my questions to the entities that you listed in your
22 declaration.

23 A Okay.

24 Q Now, when you said "meaningful authority," did you mean
25 someone other than solely you is the decision maker?

1 A In any of these entities that are listed, I am an
2 officer, but not the sole officer. So there are other
3 officers at different levels with other authorities, but I
4 was to make clear that to make sure that you knew I was an
5 officer and had authority on those listed entities.

6 Q I'm sorry. I'm confused. When you said you had
7 meaningful -- I'm trying to understand your use of the term
8 "meaningful authority."

9 A Okay.

10 Q When you said you have meaningful authority, does that
11 mean you do not have sole authority or that -- let me put it
12 a different way -- does that mean that your decision could
13 be overruled by other decision makers?

14 A Not necessarily. If I am authorized as an officer to
15 act on behalf of an entity, then I can act under my
16 authority and that's what I consider meaningful.

17 Q So you mean authority and meaningful authority are the
18 same, essentially, in this context. Is that correct?

19 A I would say yes, the way you're asking the question,
20 yes. I have authority. I consider if I have authority,
21 it's meaningful.

22 Q Okay. In exercising that authority, are you acting in
23 a fiduciary capacity?

24 A Yes, I consider it a fiduciary capacity.

25 Q Okay. For whom?

1 A For the entity for which I'm an officer.

2 Q Okay. Well, I'm trying to understand who are the
3 beneficiaries, if you will, of the fiduciary capacity that
4 you are serving in?

5 A They are all Side B, the Side B family members, the
6 Raymond Sackler family members.

7 Q Are you permitted to consult with the beneficiaries in
8 connection with making your determinations?

9 A You mean beneficiaries of trusts or?

10 Q With the various parties who we just identified as
11 being -- as benefitting from the capacities in which you
12 serve as a fiduciary.

13 A Okay. Am I permitted to visit with them? Was that
14 your question?

15 Q Yes.

16 A Yes, yes, I'm permitted to visit with them.

17 Q And to take their views into account in making your
18 determinations?

19 A I can, yes.

20 Q Okay. Do the beneficiaries include the Side B former
21 directors? That's a term you used as a defined term, if you
22 need to refer to your declaration.

23 A Yes. Yes, it does.

24 Q Okay. Thank you. Now, would you please turn to Page
25 9, Paragraph 24 of your declaration?

1 A Okay, I have it.

2 Q Would you please focus on the -- read the last sentence
3 in Paragraph 24?

4 A Staring with "It is my opinion"?

5 Q Yes, please.

6 A "It is my opinion as a fiduciary for the Side B family
7 that the contribution of billions of dollars by Side B would
8 not be wise or prudent without global peace for all Side B
9 related parties." That sentence?

10 Q Yes, thank you.

11 A Okay.

12 Q I would like to focus on the term "global peace."

13 A Okay.

14 Q Now, if -- are you aware that ten states have objected
15 to the confirmation of the plan?

16 A I wasn't aware of the number of states. I was aware
17 that there were one or more states that objected.

18 Q Okay. Thank you. If those one or more states were
19 permitted to opt out of the plan injunction, but all the
20 other states remain bound, would that be consistent with
21 your view of global peace for the Side B related parties or
22 antithetical to it?

23 A No, sir. I think my answer would be no.

24 Q No that would not be global peace? I asked the
25 question poorly, I'm afraid. Is that correct?

1 A It would not be my understanding of global peace.

2 Q Okay. Very good. Thank you. if a single one of the
3 objecting states were permitted to opt out of the plan
4 injunction but all the other states remain bound, would that
5 be global peace?

6 A No, sir.

7 Q Thank you. Okay. Now, counsel, I would like to refer
8 Mr. Ives to the Canada stipulation, which I have provided to
9 everyone as well as to the Court. I know we discussed it
10 previously and I don't know, Mr. Ives, whether you are
11 familiar with it or not, but counsel, can you provide that?

12 THE COURT: I guess we need to provide him with
13 the code so that he can open it now.

14 (Court and clerk confer)

15 THE COURT: Okay. So you have it, Mr. Ives, but
16 you have not opened it. Is that what the situation is with
17 that document?

18 THE WITNESS: Correct. I received it in an email
19 and was told not to open it.

20 BY MR. GOLD:

21 Q So you can open it now.

22 A Okay. Can I get my iPad to open it? I've only got a
23 single screen.

24 Q Yeah, go ahead. That's fine.

25 A Okay. Bear with me. I'm trying to find it. Okay.

1 Let' see. Okay -- let's make sure I've got the right --
2 stipulation and agreed order by and among the Debtors to the
3 Canadian Government. Is that what you're referring to, Mr.
4 Gold?

5 Q Yes. That is correct.

6 A Thank you. I've got it open.

7 Q Thank you. And so the record is clear, this is also
8 Docket No. 3520 filed in this case entered on August 10th,
9 2021. Would you please -- are you familiar with this
10 document? Have you seen it before?

11 A No, sir.

12 Q Would you please turn to Page 4 of the document?

13 A Okay.

14 Q Okay. I am going to read the first sentence of the
15 paragraph there to make sure -- I'll spare you the reading
16 and I'll read it myself -- but to make sure that you are
17 following what I'm referring to and if I've read it
18 correctly.

19 A Okay.

20 Q "There's nothing in a) any plan of reorganization
21 confirmed in the Chapter"

22 A Excuse me, just a second, I --

23 Q This is Paragraph 2, I'm sorry.

24 A Oh, Paragraph 2. Okay. Thank you. I was looking at
25 Paragraph 1. I'm sorry. I apologize.

1 Q I'm certainly not reading from that. "Nothing in a)
2 any plan of reorganization confirmed in the Chapter 11
3 cases, b) the shareholder settlement agreement, or c) any
4 order of the bankruptcy court confirming, amending, or
5 modifying the plan in the Chapter 11 cases, any such order
6 or confirmation order shall release or enjoin any continuing
7 claims -- there's a footnote there -- and any and all such
8 claims and cause of actions are expressly reserved." Do you
9 see that?

10 A Yes.

11 Q Are you familiar with the, with the concept expressed
12 in that that such as settlement and stipulation had been
13 reached?

14 A Just a second. I'm not sure.

15 Q I withdraw the question.

16 A I was afraid. I wasn't sure I could answer or even
17 understand the question. I'm sorry. Like I said, it's the
18 first time I've seen this so I'm trying to soak it in.

19 Q The fault is more mine than yours, sir. Let me
20 proceed.

21 A Okay.

22 Q Is this not an instance of governmental claims that
23 will continue to be asserted against the Side B related
24 parties notwithstanding the settlement in the plan?

25 MR. JOSEPH: Objection. He's disqualified himself

1 from answering. He said he understand this. He's not
2 familiar with it.

3 THE COURT: Let me ask this. Other than just
4 reading this now, are you aware of a carve out from the
5 release that would carve out what's defined here as the
6 "continuing claims"? The release of the Sackler families in
7 the plan?

8 THE WITNESS: When you say carve out, sir, Your
9 Honor, I --

10 THE COURT: It wouldn't be covered by -- the
11 continuing claims as defined here in Footnote 3, would not
12 be covered by the release. They would not be released under
13 the plan.

14 THE WITNESS: Okay.

15 THE COURT: Other than just reading this now, are
16 you aware of that?

17 THE WITNESS: No, sir.

18 THE COURT: Okay. All right. I'm not sure the
19 witness can testify anymore about it then.

20 MR. GOLD: That may be the case if you would give
21 me just a moment, Your Honor, to see if there's any other
22 questions I have to ask in this regard. I don't think I do,
23 Your Honor. Thank you.

24 THE COURT: Okay. All right. Anything else? I
25 just want to make sure you're done all your cross?

1 MR. GOLD: I am done with my cross, Your Honor.

2 We'll have to see what other questions come.

3 THE COURT: All right. Does anyone else want to
4 cross-examine Mr. Ives?

5 MR. HIGGINS: Yes, Your Honor. I'm sorry it took
6 me a second to get on the screen.

7 THE COURT: That's all right.

8 MR. HIGGINS: Ben Higgins for the U.S. Trustee.

9 THE COURT: Right.

10 CROSS-EXAMINATION OF STEPHEN IVES

11 BY MR. HIGGINS:

12 Q Good evening, Mr. Ives. Can you hear me okay?

13 A Yes, I can, thank you.

14 Q Thanks. My name is Benjamin Higgins. I represent the
15 United States Trustee. You testified in your declaration
16 regarding global peace and the need for the release and the
17 need to include all the parties listed in Appendix H, the
18 disclosure statement. Is that correct?

19 A Yes, sir.

20 Q And Appendix H lists among hundreds of named parties,
21 it also includes unnamed parties such as assets and
22 businesses own by the named parties and entities and
23 individuals to which assets have been transferred. Is that
24 correct?

25 A I can't say. I don't have that exhibit. I saw it in

1 one draft some time ago, but I don't have it and I certainly
2 didn't memorize it. So, I'm sorry, my answer is I don't
3 know.

4 Q When you specifically referenced Appendix H in your
5 declaration, is your -- well, I'll proceed to a different
6 question. Is it your understanding that the release parties
7 include parties who are not contributing to the settlement?

8 A You mean contributing monetarily to the settlement?

9 Q Correct, sir.

10 A Yes.

11 Q And is it your understanding that the -- are you
12 familiar with the release provision itself as contained in
13 the plan?

14 A I've read it and I think I have a general
15 understanding, yes.

16 Q Are you aware that it includes releases for claims
17 based on future use or misuse of opioids?

18 A I don't recall that language. I'm sorry.

19 Q Are you aware that it contains language regarding
20 release of claims related to the sale and distribution of
21 non-opioid products?

22 A Again, I don't recall. If it might help, my
23 recollection was that the language of full and unconditional
24 and broad release, anything related to this bankruptcy
25 proceeding, so that's really the extent of my understanding.

1 There may be some more details, but these that you're asking
2 me, I'm going to have to say I don't know.

3 Q So when you say you don't know about these specific
4 provisions, are you, you know, strike that. I'll move on.
5 Are you aware that the released parties definition also
6 includes various related parties such as consultants,
7 agents, advisors?

8 A I may not have heard the end of your question. I think
9 your screen wobbled, but my answer is yes. I'm aware that
10 it includes related parties, consultant, and I think others
11 that you said.

12 Q And can you just -- you've testified regarding the
13 importance of the releases to the Sackler families. Can you
14 just explain why it's important for consultants or agents or
15 advisors to have releases?

16 A Yes. It's my understanding that without those releases
17 in the future, any of those unreleased parties may be
18 subject to some claims or litigation related to this
19 bankruptcy which could then pour back to the family in some
20 way and therefore, involve them in future litigation.
21 That's what I understand.

22 Q You mean involve them as a witness, say, in future
23 litigation?

24 A I don't know in what capacity that it involved. And I
25 understand that the full release would prevent that.

1 Q From your understanding is the release broad enough to
2 include something such as state law tax claims related to
3 the manufacture of opioids?

4 A I don't know.

5 Q From your understanding is the release broad enough to
6 cover something as broad as environmental problems related
7 to the manufacture of opioids?

8 A I'm sorry. I take those as legal questions. I'm just
9 not -- I just don't -- if it was stated, I don't remember
10 it.

11 Q Sure. But would it be -- okay.

12 MR. HIGGINS: Thank you, Mr. Ives. No further
13 questions at this time, Your Honor.

14 THE COURT: Okay. Does anyone else wish to cross-
15 examine Mr. Ives?

16 MR. FOGELMAN: I have a few questions, Your Honor.
17 This is Larry Fogelman on behalf of the United States.

18 THE COURT: Okay.

19 CROSS-EXAMINATION OF STEPHEN IVES

20 BY MR. FOGELMAN:

21 Q Mr. Ives, you testified moments ago about the release
22 for individuals or entities like financial advisors,
23 attorney, accountants, investment bankers, consultants,
24 experts, and professionals. Is that right?

25 A Yes, sir.

1 Q Okay. So that was important?

2 A Yes.

3 Q So let's say a financial advisor committed fraud and
4 lied during the course of this proceedings, do you think
5 they should be given a release?

6 A Again, I'm sorry. That seems like a hypothetical, more
7 of a lawyer's question, but, again, I'm trying to help
8 answer. I want to make clear my understanding is that full
9 and unconditional -- it's very clear. When I did read it,
10 it was very lengthy that it was a full release for any
11 claims related to this bankruptcy. I realize that's very
12 broad. And I understood, and I understand it needs to be
13 very broad. I'm not sure I'm qualified to answer specific
14 hypotheticals. I'll try.

15 Q I'm not asking you a hypothetical. I'm asking you
16 about the release that you said was so important for your
17 client. Isn't it true that that release that's so important
18 for your client would immunize investment bankers,
19 attorneys, consultants, and the experts if they directly
20 rely in these bankruptcy court proceedings? Isn't that
21 true?

22 MR. JOSEPH: Objection. He's not a lawyer. He
23 said he doesn't know. This is asked and answered.

24 THE COURT: Well, I think --

25 MR. FOGELMAN: I don't believe he's answered the

1 question, Your Honor.

2 THE COURT: I think we should confine it to the
3 actual language of the release. And I think there is a
4 separate provision that deals with the proceedings
5 themselves which covers this point. So I think you should
6 move on, Mr. Fogelman.

7 MR. FOGELMAN: That's all I have, Your Honor.
8 Thank you.

9 THE COURT: Okay.

10 Okay. Anyone else have any cross for Mr. Ives?

11 MR. EDMUNDS: Your Honor, Brian Edmunds from
12 Maryland. Lightning struck, and I am in the dark on my
13 phone.

14 THE COURT: Okay.

15 MR. EDMUNDS: But I do have a few questions. And
16 I have missed part of this, obviously, so I, you know, will
17 make all appropriate apologies.

18 CROSS-EXAMINATION OF STEPHEN IVES

19 BY MR. EDMUNDS:

20 Q But I do have a question, Mr. Ives, about one of your
21 answers when you were answering Mr. Gold's questions. You
22 had said that you are, I believe, not the sole authority
23 over the trust. With whom do you share authority?

24 A If -- if there are other trustees or officers of the
25 trust company that's the trustee, then those would also be

1 involved in any trust decisions. That's what I meant.

2 Q If there are others; are there others --

3 A Yes.

4 Q -- who have that authority?

5 A Yes. I -- I am not --

6 Q Are there --

7 A Excuse me; the answer's yes.

8 Q Are there others besides the trustee if you have
9 authority over the trust?

10 A I believe as a trustee we are bound by the trust
11 document and had that authority and are supposed to -- you
12 know, to enact our authority based on that trust document.
13 So that's -- that's the way I understand my role as a
14 trustee.

15 Q Well, I'm not sure that that answers my question. Are
16 there others who have authority over the trust?

17 A If there are other trustees, any trustee -- like I
18 said, any trustee would have authority. And so I'm not --
19 I'm not a sole trustee, then there would be another trustee
20 that -- that would also have authority under the -- under
21 the trust documents.

22 Q And who is the other trustee that has authority over
23 these trusts?

24 A Well, there are other trustees in various trusts.
25 There are other trustees.

1 Q Okay. In these trusts, who are the trustees?

2 MR. JOSEPH: Your Honor, may we have
3 some clarification as to which trust? We have a two-page or
4 three-page list. So --

5 THE COURT: Well, are you looking for any
6 particular type of person? For example, are you referring
7 to any of the Sacklers?

8 MR. EDMUNDS: Well, not exclusively, Your Honor.
9 I'd just like to know who. I --

10 THE COURT: Well, why --

11 MR. EDMUNDS: -- (indiscernible).

12 THE COURT: I could understand, although it's not
13 really relevant to this testimony why you might want to know
14 whether the Sacklers are a trustee. But I'm not sure why
15 you need to know which other person is besides Mr. Ives.

16 MR. EDMUNDS: Well, Your Honor, we would take the
17 position that it's important to know everyone who is a
18 trustee over the trust given I think arguments that are made
19 later in the case. Obviously, there would be an issue if a
20 Sackler family member were a trustee and I would certainly
21 ask that question that there might --

22 THE COURT: All right. Why don't you ask that
23 question? Why don't you ask that --

24 MR. JOSEPH: Your Honor, that's in evidence in Mr.
25 Martin's report and nobody asked Mr. Martin about it, but

1 the trustees are identified.

2 THE COURT: So you're saying it's identified
3 somewhere else?

4 MR. JOSEPH: Yes, Your Honor. Another witness.

5 THE COURT: All right. In which report is it; Mr.
6 Martin?

7 MR. JOSEPH: Correct.

8 THE COURT: All right. So --

9 MR. JOSEPH: He has attached several, but there's
10 an organizational structure.

11 THE COURT: Okay. So, Mr. Edmunds, it's in that
12 report.

13 MR. EDMUNDS: Okay. I hear that, Your Honor. I
14 do have a bit more.

15 THE COURT: Okay.

16 Q Mr. Ives, aside from the trustees, are there others who
17 have authority over the trust?

18 A If I understand your question correctly, my opinion is
19 that the trustees have the authority over the trust as
20 stated in the trust document.

21 THE COURT: And no one else?

22 Q Are there other --

23 A I'm sorry.

24 THE COURT: And no one else; just the trustees?

25 A Yes. Decisions for trusts, my understanding the way I

1 operate, decisions for trusts are set with the trustees.

2 THE COURT: Okay.

3 Q Mr. Ives, are there others who influence the decisions
4 of the trustees of the trust?

5 THE COURT: Mr. Edmunds, this was covered by Mr.
6 Gold's testimony.

7 MR. EDMUNDS: Okay. Your Honor, I do apologize.
8 I don't know -- I'm not sure. Under the circumstances, I
9 don't have access to documents now. I don't have --

10 THE COURT: Right.

11 MR. EDMUNDS: -- you know, much. If the Court
12 would not mind, I will try not to do this, but I guess I
13 would maybe reserve the right to recall. I don't know what
14 else to do.

15 MR. JOSEPH: I object to that.

16 THE COURT: Mr. Edmunds, this is just -- look,
17 first of all, this declaration is really -- the questions
18 you're asking and they're the same questions that Mr. Gold
19 asked on cross are pretty tangential to the declaration in
20 the first place. I don't want to go through it twice.

21 MR. EDMUNDS: Okay, Your Honor. Yeah, I guess I'm
22 stuck with it.

23 THE COURT: There was a witness on earlier who
24 went to the organization and could have been asked these
25 questions. This is just not -- it's not what his

1 declaration's about.

2 MR. EDMUNDS: Okay. Thank you, Your Honor.

3 THE COURT: Okay.

4 Okay. Mr. Underwood, did you have any questions?

5 MR. UNDERWOOD: Very briefly, Your Honor.

6 CROSS-EXAMINATION OF STEPHEN IVES

7 BY MR. UNDERWOOD:

8 Q Mr. Ives, is it not true that the trust over which you
9 exercised authority hold or held global -- and when I say
10 global, I mean around the earth -- opioid-related assets?

11 A Just a moment. Let me think about -- I'm thinking of
12 the trust for which I'm a trustee, so if you'll bear with me
13 for just a second.

14 MR. JOSEPH: I'm going to object.

15 THE COURT: Well, he answered.

16 MR. UNDERWOOD: He's answered.

17 THE COURT: I think he answered no, right?

18 MR. UNDERWOOD: He did.

19 A Yes, sir.

20 THE COURT: Okay.

21 Q So notwithstanding the fact that you answered that
22 question no, is there any evidence to suggest that generally
23 in this case global relief will be afforded by an order
24 confirming the plan?

25 MR. JOSEPH: Objection. I do not understand the

1 question. He's not a lawyer. I don't know how he could
2 possibly answer.

3 THE COURT: I'm not sure I understand the question
4 either, Mr. Underwood.

5 Q Well, isn't it true that you advise your -- well, you
6 advise the beneficiaries that accepting the terms of the
7 plan, would produce global peace?

8 MR. JOSEPH: Objection. I really don't understand
9 the question.

10 MR. UNDERWOOD: I mean I think the witness states
11 that in his certification.

12 MR. JOSEPH: Why are we asking -- can I object
13 that it's redundant?

14 THE COURT: Mr. Underwood, if you're asking
15 whether the release covers claims against foreign entities
16 for those entity's own activities, I think that's already
17 been answered on the record by the plan proponent. So if
18 you're asking questions about that of Mr. Ives, it's
19 covering ground that the Debtors have stipulated to.

20 MR. UNDERWOOD: All right. I have no questions,
21 Your Honor. Thank you.

22 THE COURT: Okay. All right. I mean I don't want
23 to cut you off, but I thought that was where you were going,
24 and I think it's already been made clear on the record.

25 MR. UNDERWOOD: No, I appreciate that you

1 clarified it, Your Honor.

2 THE COURT: Okay. Mr. Joseph, do you have any
3 redirect?

4 MR. JOSEPH: No, Your Honor.

5 THE COURT: Okay.

6 Okay. Mr. Huebner, were you going to ask any?
7 I'm sorry. I didn't mean -- sometimes it takes a little
8 while for someone to appear on the screen. Did you have any
9 cross?

10 MR. HUEBNER: No, most definitely not, Your Honor.

11 THE COURT: Okay.

12 MR. HUEBNER: I just, you know, in my sort of
13 other role, you know, overall, I wanted to just assist in
14 closing down the day.

15 THE COURT: No. Let me then let Mr. Ives sign
16 off. Your testimony is concluded, sir, so you can sign off
17 at this point.

18 MR. IVES: Thank you, Your Honor.

19 THE COURT: All right. So that does end all the
20 witnesses for today, and we caught up on yesterday's two
21 witnesses. So I guess we resume on Monday.

22 MR. HUEBNER: Yeah. So, Your Honor, let me just
23 help for a second, if I may. So we will consult with the
24 remaining witnesses over the weekend. There were a few
25 things that we need to figure out with counsel for the

1 parties over the weekend both to ensure a smooth operation,
2 an agreed order with respect to witnesses. You know, people
3 have various blackout periods and they can only do, you
4 know, 1:00 to 4:30. And so we'll make sure that's all teed
5 up as efficiently as possible.

6 As the Court surely remembers at the last pretrial
7 conference, we also had some conversations that are not
8 quite resolved yet about where we're going with oral
9 argument and timing for each issue and the like. We will be
10 in written communication with the parties to try to lock
11 that down. And I very much hope that based on the Court's
12 guidance, we will reach a schedule that makes sense because
13 obviously people need to know when they are arguing issues,
14 when they're up, for how long, and the like. And so we will
15 be (indiscernible). We will figure that out.

16 There is one other issue, Your Honor, that's
17 (indiscernible) lawyer so I'm probably a little bit out of
18 my (indiscernible) here, but the issue about the witnesses
19 that some of the dissenting states, originally I believe on
20 the Maryland end if my memory is right, they may have been
21 joined since then. And so that issue needs to be figured
22 out also because I think the Court and everybody needs to
23 know, you know, do we have, you know, 12 witnesses left or
24 20 witnesses left.

25 And so I don't know, these are the Debtors'

1 witnesses, that goes without saying, you know, whether
2 there's anything that either the states or the Sacklers feel
3 they should say about that now or whether we should just
4 caucus over the weekend and see if we can figure things out
5 and narrow things and hopefully come with a much narrower
6 set of (indiscernible) for the Court to resolve.

7 So, you know, in order to get everything organized
8 for next week, I just wanted to put on the table some of the
9 things that I think that we will be doing over the weekend
10 to try to ensure a complete but also efficient trial because
11 many parties' weeks depend upon what's happening next week.

12 THE COURT: So --

13 MR. JOSEPH: Your Honor?

14 THE COURT: Go ahead, Mr. Joseph; that's fine.

15 MR. JOSEPH: I was just going to say we have only
16 two witnesses left, and they'll both be there Monday morning
17 and available for cross.

18 THE COURT: Okay. So I'm all for the parties
19 talking over the weekend to clarify who they're calling and
20 what exhibits relate to that testimony. But since we're
21 picking up again Monday morning, my clerks and I will need
22 to know who is testifying and the exhibits that people
23 intend to address during their testimony so that I can read
24 the witness declarations and we could be ready with the
25 exhibits.

1 So I think, in other words, it doesn't really help
2 us much to know this at, you know, 11:00 Sunday night. I
3 think really we ought to know before then, at least as to
4 the Monday agenda, you know, I would say end of the day
5 Saturday.

6 MR. HUEBNER: Yep. Understood, Your Honor. And I
7 think that the early part of next week, sort of the next
8 witnesses are probably not where the complexity comes.

9 THE COURT: That's fine.

10 MR. HUEBNER: I think it probably starts after
11 that.

12 THE COURT: And that's fine. Wherever you are,
13 you need to give us lead time so that I have reviewed the
14 declarations and know whether I have any questions and able
15 to deal with objections and cross and the like so that, you
16 know, in a way that I can do it. And that means letting us
17 know who's going to be testifying sufficiently in advance
18 and those declarations are teed up so that we can review
19 them.

20 MR. HUEBNER: Absolutely, Your Honor. I
21 understand that whatever side one is on, everyone
22 understands that you're being asked to read literally
23 thousands of pages of paper. And giving you 36 hours to do
24 so is the least any party to this case can do.

25 THE COURT: Okay.

1 MR. HUEBNER: So we will be in touch. Obviously,
2 if I've said something that someone disagrees with about
3 what's open to next week, I trust they'll speak now.
4 Otherwise, we will jump right back into trying to continue
5 to have this be as orderly and agreed as we can all
6 collectively figure out.

7 THE COURT: Okay. All right.

8 There are times when I ask questions of people
9 just to see how they will answer them. I think the parties
10 should take away today, though, that I do have some concerns
11 about the breadth of these releases as articulated not only
12 by me but by Mr. Fogelman and others. And some focus on
13 that might be a good idea.

14 MR. HUEBNER: Your Honor, we -- as I hope we
15 always do, we listen very clearly, you know, just to be
16 candid. It was an awkward spot because there was a witness
17 on the stand and people were musing about things that in
18 fact are not in fact correct with respect to how the
19 releases were in some cases. In others, for example, the
20 Debtors are not taxpayers.

21 THE COURT: I'm just -- look, there are points
22 that I think need to be addressed as far as --

23 MR. HUEBNER: Yeah, and that's what I was going
24 to --

25 THE COURT: -- the extent of the releases.

1 MR. HUEBNER: I think we understand that there are
2 clearly some reflections from the bench that need to be
3 thought about very carefully and that Your Honor can be
4 quite confident that everybody was listening. And we will
5 be doing a lot of thinking over the weekend.

6 THE COURT: Okay. Now one of my clerks quite
7 cleverly pointed out that as I understand it, although we're
8 picking up 10, the trial actually will follow the
9 uncontested omnibus hearing on Monday morning.

10 MR. HUEBNER: Yeah, there are two -- as a reminder
11 for the Court, there are a total a six pro-se matters, four
12 of which are uncontested, two are contested but I think will
13 be very brief, if my prognostication is correct.

14 THE COURT: Okay.

15 MR. HUEBNER: And then there are only the
16 uncontested sort of the examiner-related things that will
17 only take five minutes. So for efficiency's sake, what
18 might make sense to do only, of course, if it's the Court's
19 pleasure is to just book the commencement of the
20 confirmation hearing for 11:00 and we can let people go --

21 THE COURT: Well, I'm not sure that's -- look, I
22 think -- check with Mr. Andino on that. I think it may be
23 better for people to sign on and just be signed on as
24 opposed to having a whole sign-on process at 11:00
25 because --

1 MR. HUEBNER: Sure.

2 THE COURT: -- that may mean that we're actually
3 starting at 11:30. I just don't know how long it's been
4 taking people to sign on. I'd like you to check with him
5 and then send an email around to the parties who are
6 participating in the trial. I think it may be more
7 efficient for everyone to sign on at 10:00 and just realize
8 that the trial actually isn't starting until we get through
9 those relatively simple omnibus matters.

10 MR. HUEBNER: And, Your Honor, to be candid about
11 it, one of our issues is that, as the Court well knows, the
12 Debtors are paying the fees of a great many parties in this
13 case. And an extra hour --

14 THE COURT: That's true.

15 MR. HUEBNER: -- of an entire confirmation
16 (indiscernible) listening is in fact possibly in the six
17 figures. So --

18 THE COURT: All right.

19 MR. HUEBNER: -- we would ask --

20 THE COURT: As long as --

21 MR. HUEBNER: -- (indiscernible) but please don't
22 sit here for an hour if these are not (indiscernible).

23 THE COURT: However we save time is the best. So
24 if we save time by having people sign on at 11:00, that's
25 fine. If we save --

1 MR. HUEBNER: Okay. We'll work it out, Your
2 Honor.

3 THE COURT: Okay. So just check with him because
4 he knows basically how efficiently people can sign on and I
5 don't.

6 MR. HUEBNER: Yep.

7 THE COURT: Just for those of you on the line,
8 check your emails as to whether we're starting on the
9 confirmation hearing at 11:00 or at 10:00.

10 MR. HUEBNER: Thank you, Your Honor. Nothing
11 further from the Debtors.

12 THE COURT: Okay. Very well. Thank you all.

13 (Whereupon these proceedings were concluded at
14 5:52 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

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